FIRST SESSION—TWENTY-SECOND PARLIAMENT
1953-54

Joint Committee of the Senate and the House of Commons

ON

CAPITAL AND CORPORAL PUNISHMENT AND LOTTERIES

Joint Chairmen:—The Honourable Senator Salter A. Hayden
and
Mr. Don F. Brown, M.P.

MINUTES OF PROCEEDINGS AND EVIDENCE
No. 12

TUESDAY, MAY 11, 1954

WITNESS:

The Honourable Stuart S. Garson, Minister of Justice.

Appendix A: Statistical Tables, A to O inclusive, appended to the statement of the Minister of Justice.

Appendix B: Report of Chief Constable Mulligan on Murders in Vancouver, 1944 to 1953.

EDMOND CLOUTIER, C.M.G., O.A., D.S.P.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1954.

COMMITTEE MEMBERSHIP

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Hon. John W. de B. Farris
Hon. Muriel McQueen Fergusson
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Mr. H. J. Murphy
Mr. F. D. Shaw
Mrs. Ann Shipley
Mr. W. Ross Thatcher
Mr. Phillippe Valois
Mr. H. E. Winch

A. SMALL,
Clerk of the Committee.

MINUTES OF PROCEEDINGS

MORNING SITTING

TUESDAY, May 11, 1954.

The Joint Committee of the Senate and the House of Commons on Capital and Corporal Punishment and Lotteries met at 11.00 a.m. The Joint Chairman, the Honourable Senator Salter A. Hayden, presided.

Present:

The Senate: The Honourable Senators Fergusson, Hayden, Hodges, McDonald, and Veniot.—(5)

The House of Commons: Miss Bennett, Messrs. Boisvert, Brown (*Brantford*), Brown (*Essex West*), Cameron (*High Park*), Fairey, Fulton, Garson, Mitchell (*London*), Shaw, Shipley (Mrs.), Thatcher, Valois, and Winch. —(14).

In attendance: The Honourable Stuart S. Garson, Minister of Justice; Mr. A. J. MacLeod, Director, Remission Service, Department of Justice; and Mr. D. G. Blair, Counsel to the Committee.

The Presiding Chairman, the Honourable Senator Salter A. Hayden, informed the Committee that Mr. Don. F. Brown, Joint Chairman, had a statement to make. Mr. Brown informed the Committee that he had received a confidential telegram from the official hangman of the Province of Quebec requesting to be heard by the Committee. It was agreed that this request be considered by the Subcommittee on Agenda and Procedure since this matter had been referred to the Subcommittee at the previous meeting.

The Honourable Stuart S. Garson, assisted by Mr. MacLeod, was called and made a statement on commutation and remission of sentences in capital cases.

During the course of Mr. Garson's statement, references having been made to statistical tables which were also distributed to each member present, on motion of Mr. Winch it was,

Ordered,—That Tables A to O inclusive, entitled as follows, be printed as an Appendix (see Appendix A) to this day's Minutes of Proceedings and Evidence:

Table A—Disposition of Capital Cases (1930-49);

Table B—Proportion of Executions (1930-49);

Table C—Proportion of Disposed of by Appeal Courts (1930-49);

Table D—Proportion of Commutations (1930-49);

Table E—Proportion of Commutations—Supplementary (1930-49);

Table F—Recommendations as to Mercy (1930-49);

Table G—Analysis re Victims of Convicted Murderers (1930-52);

Table H—Ages of Persons Convicted of Murder (1930-52);

Table I—Capital Cases by Provinces (1930-49);

Table J—Length of Detention where Death Sentence Commuted (1930-39);

Table K—Experience of Defence Counsel acting for Persons Convicted of Murder (1948-52);

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Table L—Appeals to Appeal Courts (1948-52);

Table M—Analysis re Commutation where Insanity an Issue (1937-52);

Table N—Analysis re Commutation where Intoxication an Issue (1937-52); and

Table O—Number and Location of Persons Serving Life Sentences.

At 12.35 p.m., the Committee adjourned to meet again at 3.30 p.m. this day.

AFTERNOON SITTING

The Committee resumed its proceedings at 3.30 p.m. The Honourable Senator Salter A. Hayden, presided.

Present:

The Senate: The Honourable Senators Hayden and Hodges.—(2).

The House of Commons: Miss Bennett, Messrs. Boisvert, Brown (*Brantford*), Brown (*Essex West*), Cameron (*High Park*), Fairey, Garson, Lusby, Mitchell (*London*), Shaw, Shipley (Mrs.), Thatcher, and Winch.—(13).

The Committee commenced and completed its questioning of Mr. Garson and Mr. MacLeod with regard to the statement made on commutation and remission of sentences.

During the course of the questioning period, it was agreed that the Department of Justice, insofar as possible, would make available to the Committee the following information:

1. *Re Table J:* Of the 23 persons serving commuted sentences for homicide, how many broke parole or got into trouble again and had to be returned to penitentiary, (including attempts to commit second murders either in penitentiary, during escape, or after release)?
2. *Re Table O:* Of the 24 persons who became insane subsequent to admittance to penitentiary, what was the length of time served in penitentiary in each case up to the time the inmate became insane?
3. Consideration *in camera* at some future date of a brief containing the analyses of material on a typical commutation-remission case.
4. Supplementary statistics of interest to the Committee to be filed, if and when prepared or received by the Department of Justice, with the Committee and printed as Appendices.

On behalf of the Committee, the Presiding Chairman thanked Mr. Garson and Mr. MacLeod for their presentations.

The witnesses retired.

At 5.35 p.m., the Committee adjourned to meet again as scheduled at 11.00 a.m., Thursday, May 13, 1954.

A. SMALL,
Clerk of the Committee.

EVIDENCE

TUESDAY, May 11, 1954,
11.00 a.m.

The Presiding CHAIRMAN (Hon. Mr. Hayden): Members of the committee, we have a quorum, so I will call the meeting to order. Our co-chairman has a statement to make first.

Mr. BROWN (*Essex West*): There was a question brought up as to whether or not we should invite the official hangman of the Province of Quebec to appear before this committee. There was considerable evidence given by the last witnesses as to the office of the hangman and he has sent me a very confidential telegram taking exception to some of the evidence.

Hon. Mrs. HODGES: The hangman has?

Mr. BROWN (*Essex West*): Yes, and has expressed the desire, under certain conditions, to appear before the committee. I think this matter should be considered by the subcommittee. I do not see how he can be heard before the end of the present session but, at the earliest opportunity, I am sure the subcommittee will want to direct that he be invited.

Mr. FULTON: Mr. Chairman, do you think there should be placed on the record now any exceptions he has taken so that they can be cleared up as quickly as possible?

Mr. BROWN (*Essex West*): He has not said what he resents, but he resents very much publication of the testimony.

Hon. Mrs. HODGES: He marks the Telegram "confidential", does he?

Mr. BROWN (*Essex West*): Yes. I think the matter should be referred to the subcommittee and considered there.

Mr. SHAW: May I suggest your subcommittee could take into consideration the responsibility for working in an extra meeting. I do not know how reasonable that is, I understand you are pretty well filled up.

Mr. BROWN (*Essex West*): That is right, the subcommittee will give consideration, I am sure, to all these matters.

The Presiding CHAIRMAN: We have today as our witness the Minister of Justice, Mr. Garson, who is going to deal with commutations and remissions. Mr. Garson.

Hon Mr. GARSON (*Minister of Justice*): Mr. Chairman and members of the committee, previous witnesses have described to the committee the procedure and practice followed both at the trial of persons who are charged with capital offences and likewise in appeals from verdicts of guilty in such capital cases.

My purpose today is to attempt to describe and explain how the Governor General in Council in the exercise of the prerogative of mercy decides to commute or not to commute the death penalty.

My statement will be in two parts: first, I shall describe the nature and extent of the investigation that is made for the purpose of securing the necessary information upon which to base a decision to commute or not to commute the sentence of death. Second, I shall set out the criteria by which this information is weighed in arriving at such a judgment as to commutation.

NATURE AND EXTENT OF INVESTIGATION

As soon as a sentence of death is imposed upon a person in Canada upon conviction for a capital offence, the convicted man has a right of appeal which he usually exercises. The court of appeal may quash the conviction and direct a verdict of acquittal to be entered or it may substitute a verdict of manslaughter or it may order a new trial.

In the meanwhile, the remission service of the Department of Justice commences an inquiry for the purpose of preparing the necessary material for the consideration of commutation by the Governor in Council. The reason that is commenced early is that it takes time to gather the material and if we are going to be ready to consider commutation when the appeal has been disposed of we have to act promptly from the beginning. As I have said, the inquiry is commenced notwithstanding that the case may never have to be considered by the Governor in Council. We gather our material and if the court of appeal quashes the conviction and directs a new trial, we just close the commutation file. Our effort then has been spent in making sure that we shall not delay a proper consideration of the question of commutation if it becomes necessary.

In order that the commutation investigation may be uniformly thorough in all provinces in all capital sentences, uniform instructions have been issued to the judges in Canada who have imposed such sentences.

I propose now to put these instructions on the record. In doing so I would remind the committee that references therein to the Secretary of State should now be read as references to the Minister of Justice; for an order in council was recently passed transferring to the Minister of Justice, in this respect, all the powers, duties and functions that heretofore have rested with the Secretary of State.

I will now quote the "Resume of Instructions" to the judges:

1. The date of execution should be set at least:

(*a*) Two months from the date of passing of the sentence in the provinces of .. ..
- Ontario
- Quebec
- Nova Scotia
- New Brunswick
- Prince Edward Island

(*b*) Two months and a half in the provinces of ..
- Manitoba
- Saskatchewan
- Alberta
- British Columbia

(*c*) Three months in the Yukon Territory.

(*d*) It should not be set for a legal or religious holiday.

The reason for the difference in the periods of time is that the periods of time within which the appeal may be launched vary from one province to another and we have to make allowance for that in instructions we send out to the judges.

Mr. FULTON: It omits mention of Newfoundland there.

Hon. Mr. GARSON: Yes, that is right. I am quoting the instructions that we have been using and we have not had occasion to use any in Newfoundland as yet. We will have to amend that in due course.

I am referring again to the instructions to the judges and this is the second paragraph:

2. During the two weeks following the trial:

(*a*) The trial judge should send directly to the Secretary of State his report containing a substantial summary of the salient facts of the case, together with any remarks or recommendations from his personal notes taken during the trial with reference to the exercise of executive clemency.

The report is then referred to the Minister of Justice, who, after perusing the evidence, gives to each capital case the most anxious consideration. When reaching a decision before making his report to council, he finds it very helpful to have the views of the trial judge regarding any feature of the case which has a bearing upon the exercise of executive clemency.

This is all addressed to the judges telling them why we need their views.

Then paragraph (b) reads:

(*b*) It is also imperative that the trial judge should give instructions to the stenographer to complete and forward to the Secretary of State the transcript of evidence at the earliest possible date, together with his address to the jury.

That is the judge's address to the jury. Then paragraph 3:

3. Plan and sketches of the 'locus' and also photographs, if any, which which may have been filed as exhibits should be sent to the Secretary of State, but only after the time for lodging an appeal has elapsed.

They may be needed on appeal.

If, in the opinion of the trial judge, certain other exhibits are essential for the consideration of the case, they should also be sent. During the review of the case, if other exhibits should be needed, they will be asked for by the Department.

4. The Secretary of State should be notified by telegram of any proceedings in appeal as soon as they are instituted and of their disposal.

5. In the event of an appeal being dismissed such of the exhibits as are mentioned above should be sent to the Department of the Secretary of State together with both factums submitted upon the hearing of the appeal.

6. Should the Secretary of State be officially notified that an appeal has been launched in a case where the exhibits are with the department, they will be promptly returned to the registrar.

The picture I would like to leave with the members of the committee is that we are trying to prepare for a consideration of commutation simultaneously with the appeal going on; and we have to arrange each proceedings so we shall not be discommoding either one or the other.

7. The trial judge, when making his report, is invited to give his personal detailed observations regarding medical testimony or any insanity issue and concerning the prisoner himself.

8. If a reprieve is granted in any case, the Secretary of State should be notified by telegram as soon as it is granted.

The popular belief of the public that we have the power to grant a reprieve is quite wrong; the reprieve is granted by a judge of the court and if it has been granted we should be notified.

The second group in these instructions to the judges has to do with the preparation of transcript. It reads as follows:

RE PREPARATION OF TRANSCRIPT

1. A copy of the evidence should be forwarded to the Secretary of State within fifteen days after the trial regardless of an appeal or possibility of an appeal being taken.

2. This copy should be an original one and well done, on good paper, not transparent, which can be easily read.

3. The blank back of the preceding page in the evidence should be arranged to be on the left when bound.

4. It is customary for transcripts in all capital cases to include all proceedings subsequent to the judge's charge, and including the sentence, namely:—

(*a*) the time the jury retired and returned.
(*b*) whether or not a rider was attached to the verdict.
(*c*) judge's query of accused prior to passing of sentence.
(*d*) accused's response, if any.
(*e*) remarks of judge prior to passing of sentence.
(*f*) sentence.

5. A complete index, with page number opposite, as to witnesses and exhibits should be contained in the volume of evidence.

6. The addresses of counsel to the jury need not be included in the transcript unless specially asked for.

7. If on account of illness or some other unavoidable causes, the transcription of the evidence should be delayed over the given time, it should be forwarded in sections (100 to 150 pages) so that the necessary review of the case may be started as soon as possible.

8. Reporter's account for transcription of evidence should be presented in triplicate.

Then, the next part has to do with details of execution:

RE DETAILS OF EXECUTION

.....

2. Contrary to popular belief, there is no official hangman or executioner for the dominion. The sheriff or any person delegated by the sheriff should act as such.

3. Since in capital cases the decision of His Excellency the Governor General in Council is seldom reached and announced before the last few days preceding the date for execution, the sheriff, in every case, should make preparations for the execution. The usual period allowed between the date of the sentence and the date fixed for execution leaves barely sufficient time for all the work that has to be done in Ottawa by officials concerned with each capital case. No matter how favourable or unfavourable to commutation the jury and judge may be, the evidence must be analysed before submission to the Minister of Justice, and studied by him before the case goes to council.

4. The decision of His Excellency the Governor General in Council is made known by telegram from the Department of the Secretary of State, and confirmed by letter. It is the rule in all cases that the sheriff should repeat back the telegram, word for word, immediately upon its receipt.

5. Immediately after the execution, documents as called for under section 1072 of the Criminal Code should be forwarded to the Department of the Secretary of State with all possible despatch."

That is the end of the instructions to the judges.

The material that is available, in every case, for the consideration of the responsible minister and the cabinet is as follows:

Transcript of Evidence. This is the written record of the proceedings at trial and includes every word spoken by witnesses, the judge, counsel, jurors and the accused. It includes anything that the accused may say when he is asked whether he has anything to say before sentence is passed upon him.

Ordinarily it does not include the counsel's addresses, the judge's address, but not counsel's.

Exhibits. When the time for an appeal has expired without an appeal being taken or, if an appeal has been taken, when judgment has been rendered thereon, all the documentary exhibits in the case are sent to the Department of Justice in order that they may be examined in connection with the reading of the transcript of the evidence. It is usually found not to be necessary to require the production of exhibits other than documents and photographs but where they are required, they are requested from and are provided by the registrar of the court in whose custody they are at the time.

Judge's Report. This is the report referred to in section 1063 of the Criminal Code. It is a detailed summary of the important features of the case. It reviews the evidence adduced for the prosecution and the defence and comments upon any questions of law that may have arisen. Where there is conflicting evidence the judge is frequently invited to express his opinion with respect to the weight to be given to the evidence, if he does not do so in the first instance.

That is, if we get a report from him and we are not quite content with his comments upon the conflicting evidence, we write back to him and say: "Well, what about this particular matter? We would like you to offer some further comment."

Police Report. The investigating police force submits a detailed report of the investigation that it conducted in connection with the case. This will frequently contain information that may be relevant but which, for one reason or another, has not been adduced as evidence at the trial or is not mentioned in the judge's report.

It, for example, may not be admissible under the rules of evidence at the trial, but it may nevertheless have a bearing upon commutation.

Fingerprint Section Report. In every case there is procured from the fingerprint section of the R.C.M. Police a report showing the fingerprints of the convicted person, his photograph and his record of previous convictions, if any.

Sheriff's Report. During the period in which the condemned person is in custody awaiting the day for execution of the sentence of death imposed upon him, a report is obtained from the sheriff or the keeper of the prison in which he is confined. This report includes a statement by the prison physician with respect to the mental and physical condition of the condemned person. Of course, if the condemned person is in custody for any substantial period of time, reports will be obtained periodically.

Representations of Defence Counsel. As the committee has previously been informed, it is not necessary for a condemned person to submit, either by himself or through his counsel, agent or friends, any application for clemency. Each case receives the same careful and painstaking perusal and consideration before the minister goes to the Governor in Council with his recommendation. It is customary, however, for the counsel who defended the condemned person at his trial or who acted for him on his appeal, to write to the Minister of Justice setting out his reasons in support of an exercise of clemency by the Crown.

He may call long distance or he may get on the train and come to Ottawa and make his presentation in person. He is not restricted in any way. He is allowed all the time he wishes. He could bring the prisoner's friends or relatives. We hear them all. There are also put on file all the letters that have been written by the family and friends of the accused and any petitions that may have been signed on his behalf or letters which have been written by any person who is interested in the matter. They all go on the file and are considered.

Material Relating to Appeals. Where a convicted person takes an appeal to the court of appeal from his conviction and the appeal is dismissed, the department obtains copies of the reasons for judgment of the judges as soon judgment is rendered. Copies of the notes of argument filed on behalf of the convicted person and the Crown are also obtained. The same applies with respect to appeals to the Supreme Court of Canada. If there is no appeal as of right to the Supreme Court of Canada but application is made for leave to appeal to that court, and is refused, the reasons for judgment of the judge who dismisses the application are obtained immediately as well as any notes of argument that may have been filed on behalf of the convicted person or the Crown.

The material that I have just referred to is the minimum available for consideration by the minister and the Governor in Council in every capital case.

I think, Mr. Chairman, I should explain that at the present time the minister who is now responsible for consideration of this material and for making recommendations to the Governor in Council is the Solicitor General, the Hon. Ross Macdonald.

However, no two cases are ever the same and it frequently happens that, in considering a particular case, points of difficulty will arise in respect of which the minister will consider that, before any decision can be made, additional information or clarification is necessary. In such a case the minister is at some pains to ensure that the problem is settled to his satisfaction, either by correspondence with the persons who are competent to inform him in connection with the subject matter of his inquiry or by sending an officer of the remission service to interview the persons concerned or by interviewing them himself. The point that I wish to make here is that no detail is ever considered to be too trivial, where the life of a condemned person is concerned, to merit the most comprehensive inquiry and investigation.

There is one class of case in which this additional inquiry is invariably involved. That is the case where insanity has been raised as a defence at the trial but the accused has, nevertheless, been found guilty, or where, although insanity has not been raised as a defence at the trial, some suggestion is made after the trial that insanity should have been raised, or at the least, there is reason to believe that the condemned person is not mentally normal.

Where insanity has been raised at the trial there will, almost invariably, have been an inquiry at the trial to determine the issue whether the accused was then fit to stand his trial.

Apart from whether he was insane at the time the offence was committed, is he sufficiently sane at the time of the trial itself to instruct counsel so he can have a fair trial?

On the trial of that issue, evidence will have been given by psychiatrists, both for the Crown and for the defence. That evidence is perused with great care by the officials in the department and, of course, by the minister. The evidence is often highly technical and may involve the question whether the accused person was suffering from one of a variety of forms or types of mental deviation and, if so, precisely which of those forms or types; or it may involve

the question whether the accused person was suffering at all from any form of mental deviation. With respect to this latter point I might say that it sometimes happens that, after all the evidence and available material has been studied, the only proper conclusion that can be arrived at is that the supposed mental deviation or deterioration was not more than a sham and a pretence on the part of the accused. In any event, as I shall mention in more detail later, it is the practice of the minister concerned to avail himself of the experience and advice of independent experts in the field of psychiatry.

Thus, in a case of this kind where evidence, perhaps conflicting, has been given by psychiatrists for the Crown and for the defence at the trial of the issue, we weigh the evidence as carefully as we can and then we seek independent psychiatric experts to assist us in deciding the conflicts in the evidence before us.

Unless the accused has been found guilty and sentenced to death and the question of the commutation of that death sentence arises the minister will not have occasion to consider the psychiatric evidence given at the trial on the issue as to whether the accused was then fit to stand his trial. In such event, he considers it only as having a bearing upon the question of commutation. The minister and the Governor General in Council must be careful at all times that in exercising the royal prerogative of mercy they do not set themselves up as a final court of appeal on questions of either law or fact and in that way interfere with the judiciary, the jury or the administration of justice.

As we all know, one of the first attacks upon liberty in any country that has been free is an interference by the executive with the independence of the judiciary in the administration of justice. We have to be careful in discharging our duties here that we do not, by our actions, set ourselves up as a court of appeal over all the other courts of appeal.

The duty and right of the Governor General in Council in this connection are confined to the exercise of the royal prerogative of mercy. In such cases, involving the question of whether the convicted man is insane, there is usually a substantial amount of professional opinion available for consideration. That is, before it comes to us it is on record at the trial.

There will be the evidence of the psychiatrists called to express opinions on the trial of the issue whether the accused is fit to stand his trial. Additional expert evidence may also have been given at the trial on the question whether the accused was suffering from insanity, within the legal definition of that word, at the time of the commission of the offence. There will usually be, in the transcript of evidence, statements given by persons who knew the accused before the offence was committed, with respect to his conduct prior to the commission of the offence. There will be a report fom the keeper of the prison in which he is confined with respect to the nature of his conduct during the period following his trial and, for that matter, during the period when he was in custody awaiting trial.

It is the practice to make all this material available to an independent psychiatrist of repute.

That is, if we have any doubts in the matter we gather together all of the material which is on record in connection with the case and we hand that over to the independent psychiatrist.

At the present time that psychiatrist is Doctor J. P. S. Cathcart, of Ottawa, formerly the chief neuropsychiatrist for the Department of Veterans Affairs, who is now in private practice in Ottawa. With respect to cases arising in the province of Quebec, it has been the practice to retain the services, in this connection, of Doctor J. A. Huard, superintendent of the Bordeaux Hospital for the Insane. It is the usual practice for the psychiatric adviser to the minister to visit the institution in which the condemned person is held and spend a substantial period of time interviewing him.

This is done before he ventures to express any opinion of his own on the basis of the evidence given by the other psychiatrists and upon the points to which that evidence was addressed.

That interview is not any haphazard affair. Before visiting the institution, of course, the examining psychiatrist has, from the material which he has examined concerning the condemned man, some idea of what he is like and of the mental deviations from which he is thought to be suffering. Before the psychiatric examination begins, the prisoner is first medically examined and appropriate tests are given to him that will assist the psychiatrist in forming his opinion. For instance, if it is any form of mental deviation that might be caused by syphilis, a Wassermann test is available and other medical tests of the same kind are made.

The balance of the interview between the psychiatrist and the condemned man will ordinarily consist of questions and answers and conversation. It will generally occupy a full day and, if necessary, more than a day. When this examination has been completed and the psychiatrist has had an opportunity to consider all of the circumstances involved in the case, a meeting is held between him, the minister and the departmental officials. At that meeting, or if necessary at a series of meetings, the entire case is reviewed.

The minister does not, of course, limit himself to one independent psychiatrist if the circumstances appear to warrant obtaining still another independent opinion. The minister welcomes, of course, the opinion of the prison psychiatrist, if there is one. He also welcomes the opinion of the psychiatrists who have had the inmate under examination in any provincial mental institution to which he may have been sent for examination during any time between the day when the offence is alleged to have been committed and the day scheduled for execution of the sentence. He is glad to have the opinion of any psychiatrist to whom, at any time, the condemned man may have turned for treatment.

After the most serious consideration of all the factors involved and assisted by the psychiatrist's reports and advice the minister has to arrive at his decision which he takes then as a recommendation to his colleagues in the cabinet. Here again the whole question is thoroughly reviewed in the light of the collective experience of all the members of the cabinet and the final decision is reached which is the basis of commutation.

That concludes my remarks concerning the nature and extent of the investigation which is made and I would now like to deal with the criteria by which those facts which the investigation has disclosed are judged in arriving at our conclusion.

The criminal law of Canada is based upon the criminal law of England. It is not surprising, therefore, to find that the principles by which the responsible minister of the Crown in Canada is guided in determining the nature of the recommendation that he will take to cabinet in a capital case are, in many respects, similar to those that apply in the United Kingdom.

As a matter of fact, if we grant any intellectual competence to the British authorities and to our own, it is hard to see how, in applying their minds to what are similiar problems, they would not have reached similar conclusions.

There is one point which, while upon careful reflection it is obvious enough, cannot be too strongly emphasized. That is that there are not, and there cannot be, precise rules laid down for the purpose of determining, in any given case, whether or not there should be a commutation of a sentence of death to one of life imprisonment or lesser punishment.

I think that it would be appropriate for me, in this connection, to quote paragraph 10 of the minutes of evidence given by representatives of the Home Office before the Royal Commission on Capital Punishment in the United Kingdom on the first day of that commission's inquiry, August 4, 1949. The memorandum submitted by the Home Office contained the following paragraph 10:

> The principles which guide the Home Secretary in deciding what advice should be given The King cannot be very precisely defined.

I think I should point out what may have been established before in evidence before this committee; and that is that in the United Kingdom the Home Secretary bears upon his own shoulders entirely the full responsibility for deciding whether there should be commutation Here the practice is that the responsible minister—and this is a very grave responsibility in itself—recommends to his colleagues what he thinks the disposition of the question of commutation should be. His colleagues do not necessarily have to accept his advice and on the odd occasion they may dissent from it.

Hon. Mrs. HODGES: Does not the Home Secretary refer it to the Governor in Council at all?

Hon. Mr. GARSON: No, he is the man. You remember the last fairly controversial case that occured in Great Britain?

Mr. THATCHER: The Bentley case.

Hon. Mr. GARSON: Yes. Sir David Maxwell Fyfe in that case had to bear a heavy responsibility for what I think was a very honest and courageous decision. I was quoting from a memorandum submitted by the Home Office and after that first preliminary sentence they proceed to quote from Mr. Herbert Gladstone and they say this, as stated by Mr. Herbert Gladstone in the House of Commons on 11th April, 1907. This is quoted in 1949, so you can see there is continuity of their policy.

> It would be neither desirable nor possible to lay down hard and fast rules as to the exercise of the prerogative of mercy. Numerous considerations—the motive, the degree of premeditation or deliberation, the amount of provocation, the state of mind of the prisoner, his physical condition, his character and antecedents, the recommendation or absence of recommendation from the jury, and many others—have to be taken into account in every case; and the decision depends on a full review of a complex combination of circumstances, and often on the careful balancing of conflicting considerations.

I do not think that could be better stated. Mr. Herbert Gladstone then proceeds to quote Sir William Harcourt:

> As Sir William Harcourt said in this House, 'The exercise of the prerogative of mercy does not depend on principles of strict law or justice, still less does it depend on sentiment in any way. It is a question of policy and judgment in each case, and in my opinion a capital execution which in its circumstances creates horror and compassion for the culprit rather than a sense of indignation at his crime is a great evil'.

Then I continue quoting from Mr. Herbert Gladstone's own statement:

> There are, it is true, important principles which I and my advisers have constantly to bear in mind; but an attempt to reduce these principles to formulae and to exclude all considerations which are incapable of being formulated in precise terms, would not, I believe, aid any Home Secretary in the difficult questions which he has to decide.

That is the end of Mr. Herbert Gladstone's quotation, but going on with the quotation from the Home Office, they say this:

> Some indication can, nevertheless, be given of the practice followed by successive Home Secretaries in some classes of case and of the weight given to certain considerations.

The reasons I quoted from this Home Office statement are that I am certain, without any excess of modesty, that I could not state these principles as well myself; and also to indicate that the Home Office in 1949 is quoting what Mr. Herbert Gladstone said in 1907 and he in turn, is quoting what Sir William Harcourt said on a previous occasion. Clearly there is a well-settled approach to this problem of commutation which has long stood the test of time in Great Britain and, in Canada. Considerations similar to the foregoing apply in respect of the royal prerogative of mercy in Canada in respect of the question of commutation of sentences of death. It should not be expected, however, that the indications that may be given will have the form of precise definitions. At best, all that can be done is to indicate some of the broad, general principles that are kept in mind in respect of every capital case that comes before the cabinet for decision.

It frequently happens that the chief defence raised on behalf of the accused person at his trial becomes the chief argument in favour of commutation in the event that it proves to be inadequate as a defence to the charge and the conviction of the accused results. Thus, where insanity is raised as a defence at the trial, and is not successfully maintained, insanity will generally be the feature that is urged as the basis for commutation. Similar considerations apply in respect of the defences of drunkenness and provocation, drunkenness connected with provocation as to whether a provocation which would not be a sufficient excuse for a man if he were sober becomes sufficient excuse in relation to a person who is intoxicated at the time the provocation was offered.

Then, where the defence is that the Crown has not proved, beyond a reasonable doubt, that it was the accused, in fact, who committed the offence, that allegation will also usually be urged as the chief ground in favour of commutation of the sentence of death to one of life imprisonment.

Where a legal defence that has been raised unsuccessfully at the trial is advanced as the chief reason for commutation, the Governor in Council is not bound, and obviously should not be bound, to apply the same strict rules of interpretation that must be applied in a court of law. It may very well happen, therefore, that evidence of insanity that has proved to be insufficient, at the trial, to relieve the accused of criminal responsibility for his act, may be sufficient to justify commutation by the Governor in Council. Similar considerations apply in respect of all other legal defences that may have proved unsuccessful at the trial.

Another aspect of the matter should also be kept in mind. The proceedings at the trial are governed by rules of procedure that have been developed throughout the centuries. Similarly, the question whether any particular item of evidence is or is not admissible is governed by rules of evidence established throughout the years in the interests of the due administration of justice. Such rules, both of procedure and evidence, are essential to ensure the proper and effective operation of a system of law. No such rules of procedure or evidence apply, or should apply, however, to restrict the power of the Governor in Council to exercise clemency under those four headings I have mentioned, that is, insanity, drunkenness, provocation and reasonable doubt.

I propose now to discuss, somewhat briefly and somewhat generally, the circumstances in which a legal defence that has proved to be unsuccessful at

the trial of an accused for a capital offence, may nevertheless be sufficient to justify interference on the part of the Governor in Council.

Let me first discuss this question of the matter of the mental condition of the condemned person either at the time that the offence was committed or at the time scheduled for the execution of the sentence of death imposed upon him. This mental condition is frequently advanced as a reason for commutation of the sentence of death to one of imprisonment.

Where the issue of insanitty has been raised at the trial, there will have been an opportunity for the jury to make a finding on the question whether the accused person was unfit, by reason of insanity, to stand trial. Similarly, the jury will have had an opportunity to determine whether the accused person should be found not guilty on the ground that he was insane at the time the offence was committed. I have already indicated the material that will be available for consideration by the responsible Minister and by Cabinet in such a case and I have also indicated the additional steps that are taken to secure relevant information in this connection.

I have no hesitation in saying that the degree of mental abnormality that is sufficient to warrant a commutation of a sentence of death to one of imprisonment is less than is required, under the law, to warrant a finding by the jury that a person is not guilty on account of insanity. The standard that must be applied by the jury is set out in section 19 of the present Criminal Code, which is a codification of the well known M'Naghten Rules. Section 19 provides as follows:

> 19. No person shall be convicted of an offence by reason of an act done or omitted by him when labouring under natural imbecility, or disease of the mind, to such an extent as to render him incapable of appreciating the nature and quality of the act or omission, and of knowing that such an act or omission was wrong.
>
> 2. A person labouring under specific delusions, but in other respects sane, shall not be acquitted on the ground of insanity, under the provisions hereinafter contained, unless the delusions caused him to believe in the existence of some state of things which, if it existed, would justify or excuse his act or omission.
>
> 3. Every one shall be presumed to be sane at the time of doing or omitting to do any act until the contrary is proved.

As you can see, this section lays down the tests or standards to be applied for the purpose of determining whether a person shall or shall not be found by a court of law to be criminally responsible for his conduct in a particular set of circumstances. The jury may have found a sufficient degree of mental normality in the accused to hold him criminally responsible. The jury may have said, "Well, he may have some aberration; but he appreciates the nature and quality of his act; he knows that that act was wrong; and, therefore, we find him guilty." But if there appears to have been, nevertheless, a degree of abnormality sufficient to affect materially the control of his conduct, especially when he was under great mental stress or emotional strain, the tendency, depending of course upon the facts of the case under review, would be to exercise clemency by way of commutation.

It sometimes happens, of course, that although an accused person may have been sane at the time the offence was committed and may have been fit to stand his trial, nevertheless between the time of conviction and the day set for execution of the death sentence, mental deterioration or abnormality sets in or increases so that it cannot be said that, immediately prior to the day set for the execution, the condemned man is sane. In such a case it is invariably the practice to commute the sentence to one of life imprisonment, and that is in disregard of how heinous his crime may have been.

Again, if, after conviction, there appeared to be good reason to believe that, notwithstanding the finding of the jury, the accused was not, by reason of insanity, fit to stand his trial, the Minister of Justice would feel bound to direct a new trial under section 1022 of the Criminal Code which, of course, he has the power to do.

The extent to which the defence of insanity, although insufficient to result in the acquittal of an accused at the trial has been sufficient to justify commutation of the death sentence to one of life imprisonment, is indicated by table M, which was distributed this morning. If you look at that table you will see that between the years 1937 and 1952 insanity was the only defence raised or one of the several defences raised in seventy-two cases, and in each one of those cases the accused was convicted.

Mrs. SHIPLEY: Twenty-two cases, is it not? I am sorry, it is seventy-two.

Hon. Mr. GARSON: Yes, that is right. In each one of those cases the accused was convicted, notwithstanding the defence of insanity, but in forty-three out of the seventy-two cases the sentence was commuted to life imprisonment.

My next heading is drunkenness.

Drunkenness is a defence, sufficient to reduce a charge of murder to manslaughter, where the degree of drunkenness is sufficient to have made it impossible for the accused to form the intent that is an essential element in the crime of murder.

That is, in a criminal case the Crown must prove that the accused had a *mens rea* or guilty mind. If he was too drunk to form a guilty mind that fact would negative that essential element of *mens rea,* and disprove the Crown's case.

Of course, the burden of establishing drunkenness sufficient to constitute a defence is on the accused. Where it is raised as a defence at the trial, but the jury nevertheless finds the accused guilty of murder, it will generally be one of the prime considerations in determining whether or not the sentence of death should be commuted. The Governor in Council will consider all the relevant circumstances, including the effect that the quantity of alcohol consumed might be expected to have upon a person such as the accused.

An indication of the extent to which, between 1937 and 1952, the element of intoxication, while not sufficient to avoid a conviction for murder was nevertheless sufficient to result in commutation of the death sentence, appears in Table N. That table discloses that during the period in question intoxication was raised as the only defence or as one of several defences in thirty-three cases in which a conviction for murder nevertheless resulted. Of those thirty-three cases, however, eleven were commuted to sentences of life imprisonment.

May I next deal with provocation.

Section 261 of the Criminal Code provides in subsections (1) and (2) as follows:

> Culpable homicide, which would otherwise be murder, may be reduced to manslaughter if the person who causes death does so in the heat of passion caused by sudden provocation.
>
> 2. Any wrongful act or insult of such a nature as to be sufficient to deprive an ordinary person of the power of self-control, may be provocation if the offender acts upon it on the sudden, and before there has been time for his passion to cool.

The members of the jury, of course, having heard first-hand the evidence of all the witnesses, are in the best position to judge, as reasonable men,

whether the death was caused in the heat of passion as a result of sudden provocation. Where the jury's finding in this respect is adverse to the accused, it would be unusual, indeed, for the Governor in Council, in the absence of other material considerations, to substitute his judgment in the matter for that of the jury.

That would be a matter, if the Governor in Council were not extremely careful, of the executive interfering with the jury's rights in the administration of justice.

However, it frequently occurs that other circumstances are present which lead to the conclusion that it is proper in a given case, to substitute a sentence of life imprisonment for that of the death sentence. Those circumstances might involve such matters as lack of mental and emotional maturity, youths, acts of provocation extending over a long period of time, intoxication, unstable temperament, and so on.

I think I should add, Mr. Chairman, that the Governor in Council would approach a matter of this kind very circumspectly; and it would require a considerable amount of additional evidence to warrant commutation in spite of the jury's verdict.

Yet from to time cases do arise where, notwithstanding the guilty verdict rendered by the jury and, it may be, the dismissal of an appeal by the Court of Appeal, some doubt exists in the mind of the Minister of Justice with respect to the question whether, in fact, the condemned person was the one who caused the injury as a result of which the death of the deceased person occurred. This does not occur very frequently, because, I suppose, of the safeguardes provided by the law against unjust conviction. Unless the guilt of the accused is established, beyond a reasonable doubt, to the satisfaction of the jurors, they will presumably not return a verdict of guilty. Similarly, if the verdict of the jury is unreasonable or cannot be supported having regard to the evidence, the Court of Appeal will quash the conviction and direct a judgment and verdict of acquittal to be entered, or direct a new trial, or substitute a verdict of manslaughter.

Notwithstanding these safeguards, however, it may be that, in a very limited number of cases, the responsible Minister may have some doubt with respect to the guilt of the accused. This will particularly be the case where, after all legal proceedings have been concluded, new evidence comes to hand which was not available at the trial, and the jury did not have it before them.

In such a case, it is not the practice in Canada, as it is in the United Kingdom, to substitute a sentence of life imprisonment for the sentence of death already imposed upon the accused. In our view, if such doubt exists, it goes to the guilt or innocence of the accused.

If he is innocent, it is not sufficient that the sentence of death imposed upon him should be replaced by a sentence of life imprisonment. The question of his guilt or innocence should be placed again before the appropriate court and that, in Canada, is what is done. Paragraph (*a*) of subsection (2) of section 1022 of the Criminal Code provides that

> Upon any application for the mercy of the Crown on behalf of any person convicted on indictment, the Minister of Justice,
>
> (*a*) if he entertains a doubt whether such person ought to have been convicted, may, after such inquiry as he thinks proper, instead of advising His Majesty to remit or to commute the sentence, direct by an order in writing a new trial at such time and before such court as the Minister of Justice thinks proper;

There have been in Canada, nine cases of persons convicted of murder in respect of whom new trials were ordered by Ministers of Justice under the

authority of this provision in the criminal law. Of these, five resulted in acquittal, three resulted in convictions, and one accused was found unfit, because of insanity, to stand trial.

Under the authority of this same section, the Minister of Justice, instead of ordering a new trial, may refer the whole case to the Court of Appeal, if no appeal has already been taken. The appeal case so ordered is then heard and determined by the Court of Appeal in the usual way. The last and a recent example we had of that was where, through some slip on the part of the accused's solicitor, he had neglected to file an appeal within the proper time and we accordingly ordered an appeal under this section, 1022 of the Criminal Code.

Five capital cases have been referred to courts of appeal under the authority of these provisions. In four of the cases the appeals were dismissed. In the remaining case the court of appeal ordered a new trial, pursuant to which the accused was again convicted.

Incidentally, the outcome of these appeals showed that the Courts thought that the Minister of Justice's doubt was not well founded. Yet, if there is doubt in a capital case as to the prisoner's guilt, it seems better that that doubt should be considered by the Courts under section 1022 as I have stated.

Moreover, again under the authority of the same section, if the Minister does not consider it appropriate to order a new trial or to refer the whole case to the Court of Appeal, but he desires the assistance of the Court of Appeal on any point arising in the case, he may refer that point to the Court of Appeal for its opinion, and the court is required to consider the point so referred and furnish to the Minister its opinion in connection therewith.

YOUTH

Canada does not have, as there is in the United Kingdom, a statutory provision setting out a minimum age with respect to the execution of the punishment of death. In the United Kingdom the sentence of death was abolished for persons under the age of 18 by the Children and Young Persons Act, 1933, but, as reported in the proceedings of the United Kingdom Royal Commission on Capital Punishment, it had previously been the practice for many years not to exact the supreme penalty in the case of a person under that age. The same result has been obtained in Canada by virtue of the royal prerogative of mercy. In Canada no person has ever been executed while he was under the age of 18 years.

We have not any statute covering it, but it is just as it was in the United Kingdom before they passed their law.

Mr. SHAW: Have you had any case where they were convicted while under 18 years of age?

Hon. Mr. GARSON: Yes. In only one case has an execution occurred where the offence was committed while the accused was under that age. In that case the accused was 17 years and 10 months at the time the offence was committed and the offence, in addition to murder, involved kidnapping and arson. Table H sets out the ages of persons convicted of murder during the period 1930-1952.

This relatively arbitrary rule of practice applies in respect of persons under the age of 18 years, but youth is also a substantial consideration where the condemned person is 18 years or over. The factor of youth, in conjunction with other material considerations, will frequently be the occasion for an exercise of clemency by way of commutation of the sentence of death to one of life imprisonment. Those considerations, among others, will include

the nature of the home life and upbringing of the accused, his degree of emotional development, his degree of mental development, his temperament, and so on.

If you look at table H, you will see in the first column that there has been no execution of anyone under the age of 21 since 1947.

Now, I would like to deal with cases of constructive murder. Cases have arisen in the past where, in all the circumstances, and especially having regard to the considerations that premeditation and intent to kill or to inflict an injury known to the accused to be likely to kill, were apparently absent, the Governor in Council has seen fit to commute a sentence of death to one of imprisonment for life.

There is a provision in the Criminal Code that an accused is presumed to intend the consequences of his act, and if the natural consequence is death then he is presumed to have intended that death.

There have been cases of commutation where, although the jury must have been satisfied that the accused intended death of another as the natural consequences of his acts, there was no apparent reason or motive for the accused to wish to cause the death of his victim. These considerations are, however, in such cases, usually coupled with other material considerations such as youth, persuasion of strong-willed companions, honest mistake, unforeseen results resulting from the performance of an official act, self-defence, thoughtlessness, or, in more general terms, conduct tending to negative moral guilt and therefore tending to make the offence less culpable, and in such cases commutation is granted.

Cases sometimes arise where two or more persons are involved in conduct which results in the commission of a murder, but all such persons are charged with murder because they are parties to the offence by virtue of section 69 of the Criminal Code. I would like to quote that section:

> 69. Every one is a party to and guilty of an offence who
> (*a*) actually commits it;
> (*b*) does or omits an act for the purpose of aiding any person to commit the offence;
> (*c*) abets any person in commission of the offence; or
> (*d*) counsels or procures any person to commit the offence.

Mr. THATCHER: how does that fit in with your statement that there has to be intent?

Hon. Mr. GARSON: It fits in in this way; the Crown has to prove intent, either to commit the crime itself as set out in the definition of the crime in question, or the kind of intent that the Crown would have to prove in this particular case under section 69 would be the intent to commit the murder or the intent to aid another to commit the murder, or the intent to abet another in committing murder, or the intent to counsel or procure another to commit the murder. If the accused aided, abbetted, or counselled or procured the murderer to commit it, he too would be guilty of the offence.

Mr. THATCHER: That would not mean he necessarily had intent?

Hon. Mr. GARSON: Yes. It would mean he had the intent to aid, abet or counsel or procure another to commit an offence. Suppose two assassins go out to kill a certain victim for hire, one is assisting the other and they are engaged in a common enterprise. The assistant is certainly intending to aid the other person to commit the offence and under this Section 69 the Crown would not need to prove that he intended to kill the victim himself.

The PRESIDING CHAIRMAN: If one did the assisting and one did the killing?

Hon. Mr. GARSON: Yes.

Mr. FULTON: Is there not a broader principle that if anyone intends to commit a crime through which death results, it automatically results in murder?

Hon. Mr. GARSON: That comes under another section. I was trying to relate Mr. Thatcher's question to this section. He says how could these people under this section be guilty of murder. They are guilty of murder if they do anything to aid a person to commit it or abet any one in the commission of that offence. For example, if one gangster hired another to assassinate a third, the first gangster by counselling and procuring this murder himself would be guilty of the murder if the counselling and procuring of it could be proven against him.

Mr. THATCHER: Suppose we were out with bank robbers and suppose that in the hold-up with no intention of killing a man one actually did, how would the others have intent under the law?

Hon. Mr. GARSON: The point you now raise comes under another section of the Code. If you are asking the question from a moral point of view—as I rather infer that you disapprove of this principle from a moral point of view —I suppose that the answer would be that that is an offence because the law says it is.

Mr. THATCHER: You would not take that as a reason for commuting a sentence because there had not been intent?

Hon. Mr. GARSON: Oh, yes. "Culpable homicide is murder, (*a*) if the offender means to cause the death of the person killed; (*b*) if the offender means to cause to the person killed any bodily injury which is known to the offender to be likely to cause death, and is reckless whether death ensues or not." He says I will give him a shot through the liver and another one through the kidneys and I do not care whether he dies or not; that is murder if he dies. (*c*) If the offender means to cause death, or, being so reckless as aforesaid, means to cause such bodily injury as aforesaid to one person, and by accident or mistake kills another person, although he does not mean to hurt the person killed." If you shoot at me with intent and kill Senator Hayden instead you commit the murder of Senator Hayden.

Hon. Mrs. HODGES: He is just as dead.

Hon. Mr. GARSON: "(*d*) If the offender, for any unlawful object, does an act which he knows or ought to have known to be likely to cause death, and thereby kills any person, though he may have desired that his object should be effected without hurting anyone." If, for example, he arms himself and robs a bank and during the course of the robbery he fires at the manager just to wound him, intending merely to put him out of the running, and his aim is bad and hits him mortally although not meaning to kill him, it is murder if the manager dies.

Mr. THATCHER: I understand that, but how about the accomplice?

The PRESIDING CHAIRMAN: I think that is more a question for later.

Hon. Mr. GARSON: Perhaps I can clear that up now. The point now raised comes, I think, under Section 69, Subsection 2, which reads: "If several persons form a common intention to prosecute any unlawful purpose, and to assist each other therein, each of them is a party to every offence, committed by any one of them in the prosecution of such common purpose, the commission of which offence was, or ought to have been known to be a probable consequence of the prosecution of such common purpose."

Mr. THATCHER: I still cannot see how accomplices necessarily have intent to murder.

Hon. Mr. GARSON: They have intent to murder because the Code in effect says that they have.

Mr. THATCHER: But, do you not think that perhaps morally there is something wrong with that section?

Hon. Mr. GARSON: That is the point that you are bringing up.

I have quoted this section 69. Now let me proceed. All are parties to the commission of the offence and all are liable to be convicted of murder, even though the participation of one in the occurrence may have been much less than the participation of the other. That is your point. Occasions have arisen when, having regard to all the circumstances, it has been thought proper to commute the sentence of the lesser participant but to let the law takes its course in the case of the others. I suggest perhaps that commutation meets your moral point. Is that right?

Mr. THATCHER: Yes.

Hon. Mr. GARSON: The report of the United Kingdom Royal Commission on Capital Punishment, states, at page 11, that "in certain classes of case a reprieve is a foregone conclusion." Such cases are those that are described as calling more for pity than for censure, those, for instance, of what are commonly known as "mercy killings" and the survivors of "genuine suicide pacts". Not a suicide pact where a man wants to get rid of an embarrassing lady friend, for example, and they enter into a solemn suicide pact, and she goes through with it and he takes care not to do so.

Mr. SHAW: Or vice versa.

Hon. Mr. GARSON: Or vice versa. The United Kingdom Report notes that there has not been since 1849 a case of the execution of a mother for the murder of her own child under the age of one year.

I do not think it would be fair to say that in Canada the practice of the Governor in Council involves, as a "foregone conclusion", commutation in the case of mercy killings and survivors of genuine suicide pacts. I say this for the reason that there has not come to the Governor in Council, for decision, a sufficient number of cases for it to be said that a "practice" in this respect exists. The reason is, I suppose that such cases, if genuine, would tend to excite the sympathy of the jury, which would thereby be moved to return a verdict other than that of guilty of murder. It is only when in a mercy death or genuine suicide pact the jury finds harshly, in spite of it being a mercy killing, or genuine suicide pact, that the accused is guilty, that the question of commutation of a death penalty arises. If the jury acquits in such cases the question of commutation never gets to us. Now I have no doubt that the Governor in Council would regard with the greatest sympathy the case of a person convicted of a genuine "mercy killing" or the survivor of a genuine "suicide pact". As a matter of fact there was a case you may have read of in Drumheller about two years ago which was a case of a mercy killing and there was no hesitation at all in granting commutation in that case. Yet while we have the greatest sympathy in all such cases, I do not think that we can say that it is a foregone conclusion that such persons in Canada would have their sentence of death commuted.

As far as the killing by a mother of her child in arms is concerned, I should think that there again the tendency would be for the jury to return some verdict other than guilty of murder. Prior to the enactment of the infanticide provisions in the Criminal Code of Canada in 1948, juries tended to return verdicts of manslaughter in such cases. Indeed, the charge most frequently laid in such cases was manslaughter rather than murder. Since 1948, the Code has provided for a charge of infanticide to be laid against such a person. Subsection (2) of section 262 provides that

> a woman who by wilful act or omission causes the death of her new born child shall be deemed not to have committed murder or

manslaughter if at the time of the act or omission she had not fully recovered from the effect of giving birth to such a child and by reason thereof the balance of her mind was then disturbed, but shall be deemed to have committed an indictable offence, namely, infanticide.

This provision has been amended in the Criminal Code Bill, which is now before Parliament, so that, upon the coming into force of the new Criminal Code, the provision will provide as follows:

A female person commits infanticide when by a wilful act or omission she causes the death of her newly-born child, if at the time of the act or omission she is not fully recovered from the effects of giving birth to the child and by reason thereof or of the effect of lactation consequent on the birth of the child her mind is then disturbed.

The maximum punishment upon conviction for infanticide is imprisonment for three years.

I do not think it could be said that, in every case where a mother kills her child during the period of a year or so after its birth, and is convicted of murder in respect thereof, it would be a foregone conclusion, in Canada, that the sentence of death would be commuted to one of life imprisonment. Certainly, however, the circumstances would be considered most carefully with a view to determining whether the case contained elements calculated to make it fall more within the definition of infanticide than within the definition of murder. The case in which an unmarried mother killed her newborn child under the distress of mind and fear of shame caused by the birth would undoubtedly be one in which the tendency would be to commute the sentence of death to life imprisonment.

What I have said thus far cannot, in any sense, be taken to be exhaustive of the principles that are kept in mind in determining whether a sentence of death should be commuted. I want to repeat again that every capital case must necessarily be dealt with in the light of all the circumstances. No two murders are ever committed in exactly the same way and no two convicted murderers are ever exactly alike. A circumstance that, in relation to one case, may have great weight in support of the view that clemency should be exercised may, in another case involving different facts and different personalities, be of much less weight.

The Executive, in advising on the question of the commutation of a death sentence does not, in any sense, operate as a court of justice. Its function is to advise with respect to the manner in which the mercy of the Crown shall be exercised; and, it must take cognizance of human weaknesses and failings. The advice tendered, however, must also be based upon the concept that the law against murder is intended to protect law abiding citizens and society itself from the crime of murder. Capital punishment is provided for by law primarily as a deterrent. Its value as such would be destroyed if for improper reasons the executive pardoned him whom after a fair trial a jury of his peers had found to be guilty of murder, without any extenuating circumstances. The Royal Prerogative of Mercy is a recognition in our constitution that there may be circumstances where, by reason of the rigidity of the law, the punishment of death is a greater punishment thant that which is merited by the conduct in respect of which the person has been condemned to death. In those circumstances executive clemency operates to relieve the harshness of the punishment imposed by virtue of the rigidity of the law; but there is preserved the deterrent effect of the threat of capital punishment in respect of those cases where, in all the circumstances, the punishment of death is not excessive having regard to the nature of the offence committed.

The PRESIDING CHAIRMAN: Possibly we should adjourn and meet again at 3.30.

We should have a motion that these tables A to O inclusive, which we have here, be appended to the proceedings for today.

Moved by Mr. Winch.

Carried.

AFTERNOON SESSION

3.30 p.m.

The PRESIDING CHAIRMAN (*Hon. Mr. Hayden*): Ladies and gentlemen, we have a quorum and we have reached the question period. Before going on with that, I would like to say that the next meeting is on Thursday morning at 11.00 o'clock. The subcommittee will be meeting tomorrow afternoon at 3.30 in room 148 of the Senate.

Hon. Mrs. HODGES: And it will be at 11.00 o'clock in this room on Thursday?

The PRESIDING CHAIRMAN: Yes, 11.00 o'clock on Thursday in this room, that is to hear the United Church. Mrs. Shipley?

Mrs. SHIPLEY: Thank you, Mr. Chairman. I believe, Mr. Garson, that you said the final plea of the counsel for the defence and the Crown was not submitted as part of the transcript that was sent to your department?

Hon. Mr. GARSON: That is right.

Mrs. SHIPLEY: Would you care to comment on the reasons why?

Hon. Mr. GARSON: I do not know that I could offer any particular reason except that has been the practice. I am just offering my own opinion, just rationalizing if you will a fact, that there may have been a feeling that what the Governor in Council was concerned with was the views of the adjudicating officers rather than those of the pleaders either for or against the accused.

Mrs. SHIPLEY: Is it that in our courts they might appeal to the sympathies in their final plea to the jury rather than sticking to facts of evidence?

Hon. Mr. GARSON: Well—

Mrs. SHIPLEY: Might that be one of the reasons?

Hon. Mr. GARSON: Yes, that could be one reason but I think the fact is that the jury's verdict and the judge's charge are both the final resolving of such pleas pro and con.

Mrs. SHIPLEY: In other words, a golden-tongued orator in presenting such a plea, if an accused did not have such a person defending him it would not make much difference at the time it got to your attention whether the man was an eloquent speaker or not. You deal with facts?

Hon. Mr. GARSON: Yes, that is right, and we also deal, so far as the original material is concerned, with the judge's view of those facts in his charge to the jury and with the jury's verdict on those facts and any rider it may wish to attach making a recommendation of mercy or with the fact that it did not attach such a rider.

Mrs. SHIPLEY: I have just one other short question.

Mr. BLAIR: It is not the usual practice for shorthand reporters to take down the addresses of counsel.

Hon. Mrs. HODGES: Either prosecuting or defending?

The PRESIDING CHAIRMAN: No, not ordinarily, but the judge may sometimes direct and sometimes it becomes important, as I understand it, because there have been odd cases where an appeal has been allowed and a new trial granted on the basis of inflammatory statements of Crown counsel made when addressing the jury.

Hon. Mrs. HODGES: In cases like that, what do you do? Do you rely on memory if you have no shorthand report?

The PRESIDING CHAIRMAN: You would have to rely on your notes if there was no shorthand report.

Mr. LUSBY: Is it not the custom to take down the addresses in capital cases?

The PRESIDING CHAIRMAN: It may be in capital cases but not the ordinary cases.

Hon. Mrs. HODGES: Is it not in capital cases?

Hon. Mr. GARSON: Well, my impression is that it varies from one province to another, in some provinces they do, and in some provinces they do not. You may remember that in my main remarks I said we get these if we need them where they are available.

Mrs. SHIPLEY: The other question is, I thought I understood you to say that the previous record of convictions of an accused person was submitted either to your department or to the court during the trial and I always understood that they never were referred to in a trial.

Hon. Mr. GARSON: You are quite right. I indicated that amongst other material which we do secure was the fingerprint record. That is what I said:

> In every case there is procured from the fingerprint section of the R.C.M.P. a report showing the fingerprints of the convicted person, his photograph and his record of previous convictions, if any.

That has quite a bearing upon commutation. If we are going to accept the extraneous evidence which we do accept on the question of commutation, that is an important part of it.

Mrs. SHIPLEY: I just wanted to make clear it was not during the trial.

The PRESIDING CHAIRMAN: Senator Hodges?

Hon. Mrs. HODGES: I was tremendously impressed with the extent of the safeguards applied, is it fair to ask you whether, in your judgment, even further safeguards could be applied?

Hon. Mr. GARSON: I think it is a perfectly fair question, but I do not know what they would be. If we knew of any we would be inclined to apply them.

Hon. Mrs. HODGES: You feel, as far as is humanly possible, you make sure no one is hanged wrongly?

Hon. Mr. GARSON: We are just human beings. We can be mistaken. There is this about it; we got our commutation procedure largely from British precedents. We have carried on their tradition here in Canada. They have had a very long experience in dealing with such matters, and the safeguards we have now have not been thought up in a short time, but are safeguards that all those long years of experience indicate are worth while. We have the accumulation of all of those devices to protect the accused.

Hon. Mrs. HODGES: And in your experience, your own experience, you have no other suggestion to offer?

Hon. Mr. GARSON: No, I have not. If I had any ideas I would have suggested them to my colleagues and had them incorporated in our procedure.

The PRESIDING CHAIRMAN: Mr. Thatcher?

Mr. THATCHER: Yes, Mr. Chairman, I would like to ask the minister if a jury recommends mercy in one of these cases is it usual for the cabinet or the Governor in Council to honour that recommendation by commutation?

Hon. Mr. GARSON: Yes, we give the most careful consideration to such jury recommendations. I will give you the figures in just a moment. They are the best indication of whether it is usual or not. "Usual", however, is a word that can be open to an interpretation indicating we are in the habit of honouring such recommendations. We give careful consideration to the jury's recommendation for mercy but we regard it as only one of the important factors in

the final judgment which we reach. Sometimes it seems fairly clear from the other facts of the case that the jury's recommendation for mercy, we suspect, has been a means of getting some juror who is rather conscience stricken about capital punishment to concur in a verdict of guilty if the jury will add a rider for mercy. Again it may represent a compromise in a jury between a verdict for manslaughter on the one hand and murder on the other, when those who are holding out for manslaughter in effect may say, "Well, if we can get a rider for mercy in here we will agree to a verdict of murder". You must remember the jury has a difficult task convincing twelve men to reach any unanimous verdict. We give the most careful consideration to a jury's recommendation for mercy in all cases. Weighing it in the light of all of the facts we do not give effect to it in all cases, but we give effect to it in the majority of cases. If you will turn to table F you will see there a record of the convictions from the year 1930 to 1939 inclusive and from 1940 to 1949 inclusive, a total period of twenty years. If you will follow the first line, the total number of convictions in the first decade is male, 198, female, 10. Out of the total number of convictions there were recommended for mercy a total of male, 38, female, 4; that is 42 altogether. Now, if you will go a little further to the right you will see "disposed of by appeal court, 4 male, 1 female."

Hon. Mrs. HODGES: That is in "recommended to mercy"?

Hon. Mr. GARSON: Oh, yes, that is in the recommendation for mercy category. What happens is, there is a trial, the accused is convicted and the jury says, "We recommend the accused to mercy." Then, of all the cases in which that recommendation was made, 5 were disposed of by the court of appeal and the conviction quashed upon some technical ground, before the question of commutation came before us. If you take the total number of recommendations for mercy which is 42 and there are 5 disposed of by the court of appeal, that leaves a net amount of 37 accused that came on to the Governor in Council asking for his consideration of commutation by reason of, amongst other things, the jury's recommendation of mercy. Of those 37 cases we commuted 23 male persons, commuted the death sentence of 23 male accused and 3 female accused, making a total of 26. That is 26/37ths or 70 per cent. There is the best proof of the extent to which we give effect to the jury's recommendation for mercy.

In the next period, from 1940 to 1949, you will see that we commuted 24 out of a possible 32 death penalties or 75 per cent.

If you look further up the column to the right to those not recommended for mercy you will see that in the decade from 1930 to 1939, using the same formula that I have already indicated, we commuted only 12½ per cent or exactly one-eighth. In the period, 1940 to 1949 inclusive, we commuted only 20 per cent. So you can see from that that we have commuted many times the percentage where there was a recommendation for mercy as compared with where there was not a recommendation for mercy. I think that is right because one must remember that we, like the court of appeal, are not in as advantageous a position to view the case generally as the judge and jury who are there observing the demeanor of the witnesses and the accused and hearing the evidence at first hand.

Mr. THATCHER: Could I interject right there? That is a point that appeals to me. What would be the dangers of us changing this law to make it read that if the jury recommend mercy that it would be automatic? Would you point out the dangers of doing that if there are some?

Hon. Mr. GARSON: Well, I think really what you are asking there is the question as to whether the accused is to be sentenced to death should be left with the jury; and what the effect of that would be?

Mr. THATCHER: If they have recommended mercy I presume he would get life imprisonment.

Hon. Mr. GARSON: If it were automatic, that would leave to the jury the question as to whether a given accused should receive the death sentence. For the jury would know that life imprisonment would be automatic the minute they recommended mercy. I think my answer to the second question as to whether that is a wise move would be the same that has been made here by the judges.

Mr. THATCHER: You stated this morning in Canada there is no official hangman, but if I understand the witnesses that have been here so far I know there is only one that does the job, is that not correct?

Hon. Mr. GARSON: Yes, I understand that is a profession with him and while he is not official he has not much difficulty getting the assignment because there is not much competition.

Mr. THATCHER: Do you recall, Mr. Garson, any sheriff resigning rather than doing the job himself? One of them said he would not care to.

Hon. Mr. GARSON: No, I would not recall, because I would not come into contact with that at all. It has been indicated by previous witnesses that the whole task of carrying out the death penalty is a provincial responsibility which does not come to us at all. I could perhaps have encountered that when I was in provincial public life but not here; and we never had any difficulty in Manitoba in such matters that came to my attention.

Mr. THATCHER: The sheriff in Toronto said the hangman was getting pretty old and there was no one learning the trade. What is going to happen if this fellow cannot carry on with the job, what will you do?

Hon. Mr. GARSON: I will not be doing it because it is a provincial responsibility.

Mr. THATCHER: You make the law but you do not have to carry it out?

Hon. Mr. GARSON: That is right.

Mr. THATCHER: In some of these cases that are commuted to life imprisonment, how many years does that usually entail in jail?

Hon. Mr. GARSON: Well, we have a table here which is an effort to provide an answer to that question, table J. This is only part of the story, it is the only part that we have been able to provide statistics on. This indicates a number of persons serving commuted sentences for life whose release was authorized on a ticket of leave. It is broken down into different categories, those who served nine years, ten years and so on. In relation to those who have not been released we have a number serving life sentences now, but I am not in a position to tell you how long they have served respectively. The numbers are indicated in table O. We might be able to get you the length of time these people have served, but we have not been able to do so up to the present time.

Mr. THATCHER: There is no average, it is not necessarily ten or fifteen or twenty years.

The PRESIDING CHAIRMAN: There does not seem to be from the table.

Hon. Mr. GARSON: No, what we are trying to do in our present penal administration is to relate the release of these prisoners to the opinion which has been formed by the prison officials as to whether they can make a go of it when they are released. If they cannot make it go we owe it to society and to the prisoners not to let them out. In those cases where they think they have reformed sufficiently to be released we release them on ticket of leave.

Mr. THATCHER: Just one more question, if I may? This morning we were talking about intent and my mind goes back to that Bentley case we mentioned this morning in England where the chap who fired the shot which killed a policeman was put into jail for life because he was underage and the chap

who was wrestling with the policeman was hanged. I know technically the way Canadian law reads the chap that was grappling with the policeman might have been hanged in this country also, but I cannot reconcile that man as having intent to murder when he did not have a gun. Now, what about the dangers of changing Canadian law so we do not abolish capital punishment, suppose we are going to keep it, if we had a clause in there somewhere, I do not know how to do it legally, but there had absolutely to be intent to murder before a man may be hanged. In other words, that chap could not be hanged. What is dangerous about that?

Mr. WINCH: Is that not the case where he actually told the other man to shoot?

Hon. Mrs. HODGES: Yes, he said, "Go ahead and shoot."

Hon. Mr. GARSON: That is it, the honourable members have put their fingers on an important point. The reason why I would hesitate very much indeed to discuss the disposition of such a case in Great Britain is this: as I said this morning, each case has to be decided on its own facts and those facts have to be gone over with very great care. For instance, if one slurred over this one fact of his telling the other man to shoot—

Mr. THATCHER: Excuse me, he said, "Give it to him," and the defence was he meant the other boy to give the gun to him; that was the defence.

Hon. Mr. GARSON: Yes, but apparently the Home Secretary did not put that interpretation upon that defence.

The PRESIDING CHAIRMAN: Nor the jury either.

Mr. THATCHER: You understand the point I am getting at. Would it not be better if we insisted there must be deliberate intent to murder before a man can be given capital punishment?

Hon. Mr. GARSON: Well, as I said to you this morning, in so arguing you are really raising a moral problem. You are saying in effect that the criminal law of Canada as it is now drafted does not reflect what you Mr. Thatcher think that it should from a moral point of view. In your view you think only that man should be convicted of murder who intended to murder. Rightly or wrongly, both in Great Britain and in Canada, based upon human experience over a long period of time, the view has been of those who were responsible for drafting criminal law, as I indicated this morning, that those people are parties to an offence who either actually commit it or who aid some person else in committing it or who abet any person in the offence or who counsel or procure the commission of it. I gave the example this morning that if one hires an assassin to kill another the law says that he is equally guilty as a murderer; you would say that inasmuch as the man who hired the assassin did not himself commit murder he should not be guilty of murder.

Mr. THATCHER: No, not a case like that; I would agree with that; but there are other cases.

Hon. Mr. GARSON: Well, let us consider another such a case in which a group of heavily armed robbers go to perpetrate a robbery and there is one out of four of them who is driving a getaway car. This man knows his accomplices are armed to the teeth; he knows that they are prepared to shoot their way in and shoot their way out; he knows that death may very well supervene, yet he goes and drives them there and takes them away. Now, it is a question of legislative policy: should or should not a man of that sort be responsible for the consequences that are likely to ensure from the type of enterprise in which he joins with other people? I think, in all deference, as a moral question and not a legal question, that he should be responsible and the law so states. If you say he should not, I respect your viewpoint, but I do not agree with it.

Mr. THATCHER: I follow that.

Hon. Mr. GARSON: Now, that was outlined this morning and I do not think it can be put in clearer terms than this:

> I am quoting now from Section 69 (2) of the present Criminal Code. If several persons form a common intention to prosecute any unlawful purpose, and to assist each other therein, each of them is a party to every offence committed by any one of them in the prosecution of such common purpose, the commission of which offence was, or ought to have been known to be a probable consequence of the prosecution of such common purpose.

That principle is rather hard, perhaps, when we apply it to an offence which is punishable by death, because there is a finality to death that we all shrink from; but if you apply that principle to a robbery, supposing you have a man driving a getaway car and the other two rob the bank and get away with $50,000 and the police never catch them; are you going to say that the man who drove the car, who knowingly drove the car, who knew what he was doing when he drove the car is just a chauffeur and is not morally responsible for what took place?

Mr. THATCHER: I see your point, but I do feel personally that the man who was a chauffeur did not commit murder, therefore I do not see why the state should hang him. I will drop it there.

Hon. Mr. GARSON: It is a question of how, in the determination of our legislative policy, we approach what is a moral problem, and you say in a case of that sort the man should not be involved although he was quite prepared that his associates in crime should shoot the people down.

Mr. THATCHER: But he may not even know.

Hon. Mr. GARSON: Oh, well, if he could really prove that he did not know, that might but a different complexion on the matter.

Mr. THATCHER: Does he not have to have a gun, does he not have to go in with a gun and they assume he does know?

Hon. Mr. GARSON: That is quite true but, on the other hand, the counsel who is defending this particular accused was able to bring before the court evidence which the jury would believe to indicate that notwithstanding the others were armed his client did not know of this he might succeed in this defence if the jury could be convinced. This would be a very difficult job to do; but if there was evidence that this accused had no reason to know that what happened was likely to happen he would—

The PRESIDING CHAIRMAN: Suppose when they were planning this robbery this man with a conscience said, "It is all right to go in with those guns but show me that those guns are not loaded". If you could establish that and then the others go in and slip a bullet in the gun on the way in, in those circumstances I think the man in the car might succeed in his defence.

Hon. Mr. GARSON: He might, but in order to do so he would have to convince the jury, and if the jury found him guilty he would have to convince us on the question of commutation.

Mr. THATCHER: I would think on a robbery they would go in, not intending to kill anybody, but in the process of the robbery one shot a person, then I still cannot understand why a man in the car should be hanged.

The PRESIDING CHAIRMAN: Mr. Winch?

Mr. WINCH: I am interested in those who have been found guilty of a homicide. Under table J it is pointed out that from 1930 until 1939 there have been 23 who have had their death sentences commuted and that as a result of the commutation those who were guilty of homicide in this group served anywhere from nine years up to eighteen years.

Hon. Mr. GARSON: May I put it this way. This table is a table of those who, having had their death penalty commuted to life imprisonment, were then, by a subsequent and additional exercise of the royal prerogative, released on ticket of leave after the expiration of these various times indicated in this table.

Mr. WINCH: That is the point I am coming to, is there any differentiation between the words "ticket of leave" and "parole" or are they the same?

Hon. Mr. GARSON: No.

Mr. WINCH: There is no difference?

Hon. Mr. GARSON: No.

Mr. WINCH: That leads me to my question, of those 23 who were guilty of a homicide, they were found guilty and they got executive clemency first and after that they got the additional clemency after serving from nine years to eighteen years. Are there any figures as to how many, if any, of those 23 broke their parole or got themselves into trouble again and had to be returned to the penitentiary? You see my point? I am trying to show what is best for those who commit murder; that they can be reformed under the correct attention.

Hon. Mr. GARSON: I haven't the figures with me. We have been trying to get them and we may perhaps be able to get them.

Mr. WINCH: That would be most interesting and conclusive.

Hon. Mr. GARSON: Well, it would be rather a reflection upon our judgment if there were any that did not make good because where the offence has been a very serious one we try to avoid releasing those who will not make good. You can see that if we let one of those prisoners out and another murder was committed by him there would be very severe criticism of our revision service and penal system.

Mr. WINCH: It seems to me if you go into the figures it would be almost conclusive evidence that because you commit a homicide it does not prove that you cannot be reformed.

Hon. Mr. GARSON: Oh, well, we have never taken that position.

Mr. WINCH: It would be very interesting to see whether that could be established.

Hon. Mr. GARSON: Well, in the administration of penitentiaries we do not say for a moment the prisoners cannot be reclaimed. Our whole effort is to reclaim them. When you see 70 to 75 per cent recommendation of the jury given effect to by us, that is a good indication of what our attitude is. As long as we can be sure they are going to make good there is every reason in the world to be humanitarian, and if you wish to put it on the lowest basis there is a substantial treasury saving in the release of these prisoners.

Mrs. SHIPLEY: I would like to say for the record that the group of persons we are referring to at this moment, are a selected group of those who committed homicide.

Mr. WINCH: I had a follow-up question on that. I believe the meaning of "life" in Canada is twenty years?

Hon. Mr. GARSON: No.

Mr. WINCH: I think that should be clarified.

Hon. Mr. GARSON: Automatically they are not released after twenty years on a life sentence; we can keep them there as long as they live if it seems proper to do so. The terms of imprisonment imposed is for life, just as it states and the term actually served varies depending upon whether we think they can get rehabilitated themselves if released. You can understand that we have a responsibility to them, they are prisoners and criminals if you like but, after all, it is a case of "There but for the grace of God go I," and

we want to do our best for them. On the other hand, we have responsibility to society and if any one of the prisoners we let out on ticket of leave got involved in another murder people would certainly take a very dark view of the action of our Remissions Branch in releasing him.

The PRESIDING CHAIRMAN: Anything else, Mr. Winch?

Mr. WINCH: Yes, one question if I may. Is my information correct that at the present time your department has some kind of study going on on the question of remission?

Hon. Mr. GARSON: Yes, that is right.

Mr. WINCH: Does that committee include in its terms of reference a study of remissions as far as homicidal prisoners are concerned?

Hon. Mr. GARSON: It covers remissions generally.

The PRESIDING CHAIRMAN: Mr. Lusby?

Mr. LUSBY: I was not here this morning, but there was one question I would like to ask which arises out of a previous one. I understand when you are dealing with the question of commutation you have the man's previous criminal record, if any, before you?

Hon. Mr. GARSON: Yes.

Mr. LUSBY: Did I understand you to say that that may have a great deal of weight in deciding against commutation?

Hon. Mr. GARSON: You mean commutation or letting out on ticket of leave?

Mr. LUSBY: I was referring to the death sentence more.

Hon. Mr. GARSON: Yes, this factor carries weight but I do not think I can too strongly emphasize that all of the factors we have in connection with any one case have to be considered, each in relation to all of the others, therefore, the amount of weight one might give to a criminal record in one case might be quite different from what one would give to it in another. It depends in part on the nature of the criminal record. A man may have quite a lot of convictions for forgery or crimes of that type. Then he becomes involved in a crime of violence for the first time and because he has been guilty of that other crime of say, forgery, does not necessarily indicate that he is disposed to be guilty of a crime of violence.

Mr. LUSBY: That is what I had in mind; whatever weight was given to it would depend more on the nature of the criminal record than its length.

Hon. Mr. GARSON: Oh, yes.

Mr. LUSBY: In other words, you are not following the old adage of giving a dog a bad name and hanging him?

Hon. Mr. GARSON: Not at all; we have to consider every single fact that we have before us and each is considered in the light of all the other facts of that case. That is the reason why, as I indicated in my remarks this morning, it is difficult to lay down rules as if we were considering a multiplication table or arithmetical values.

The PRESIDING CHAIRMAN: Mr. Boisvert?

Mr. BOISVERT: Would you be kind enough to comment briefly about the plea of self-defence which is raised quite often in murder cases?

Hon. Mr. GARSON: You mean as regards commutation?

Mr. BOISVERT: Yes.

Hon. Mr. GARSON: Well, self-defence in a homicide case is referred to in section 53 of the present Criminal Code. Perhaps I had better read the whole of section 53:

Every one unlawfully assaulted, not having provoked such assault, is justified in repelling force by force, if the force he uses is not meant to cause death or grievous bodily harm, and is no more than is necessary for the purpose of self-defence.

2. Every one so assaulted is justified, though he causes death or grievous bodily harm, if he causes it under reasonable apprehension of death or grievous bodily harm from the violence with which the assault was originally made or with which the assailant pursues his purposes, and if he believes, on reasonable grounds, that he cannot otherwise preserve himself from death or grievous bodily harm.

In other words, if that defence is raised in a charge of murder he has to satisfy the jury that in causing death of his victim he himself was under a reasonable apprehension of death or grievous bodily harm. That is a question of fact. If the jury, having had the advantage of observing the demeanour of the accused in a case of this sort—if he was pleading self-defence he would have to take the stand to explain his position—if the jurymen are unanimously of the view that the defence of self-defence which the accused has raised has not been established by the evidence which he has adduced, then on that straight question of fact I should think that the Governor in Council would be very wary about setting himself up in effect as a court of appeal above the jury on that question of fact and granting a commutation upon the ground that the jury's verdict was in error. However, circumstances may arise; there may be some new evidence turned up that was not available before the jury which would warrant commutation. One cannot generalize, one cannot set any fixed rules in cases of this sort.

In a great majority of cases I would not think there would be much chance of the jury's verdict of guilty, with no recommendation for mercy, being overruled on an application for commutation based on self defence. However, there may be further ground for leniency: age, intoxication, insanity or weakness of mind falling short of the rules in the M'Naghten case and if they were present then commutation may be granted on those other grounds. Does that answer your question?

Mr. BOISVERT: Yes.

Mr. SHAW: Sometimes it is difficult to determine the degree of danger with which you are faced. I had a personal experience about twenty years ago. I was in a hotel room and I was wakened up at 1.00 o'clock in the morning by a person trying to get into the room. That person tried to break into the room through the corridor and then went into the room next to mine and tried to force his way in through the bathroom and then came back again to my door. I came to the conclusion he intended to get in and I grabbed an empty bottle. I felt fear such as I had never felt before; I would have killed him and in a case like that I do not know what it was that prevented me and yet I am liable to be accused of murder.

Hon. Mr. GARSON: Yes, but having, I am sure, a perfectly clear record up to that time—

Hon. Mrs. HODGES: If not since.

Mrs. SHIPLEY: And it being the only bottle in the room.

Hon. Mr. GARSON: It would just be a straight case. I do not think a jury would have any trouble although they might, perhaps, have thought you might have let the man come into the room as you could see what it was all about before you hit him. He may have been a drunk trying to get in.

Mr. SHAW: I had no telephone in the room and I had no way of telling.

Hon. Mr. GARSON: Well, I think it would be just a straight case of whether you could get the jury to believe the justification which you advance.

Mr. BOISVERT: One more question, with respect to table O. I would like to know if it is possible—I think you referred before to this question, the length of time served by a prisoner convicted of murder who became insane subsequent to admittance to the penitentiary, if it is possible I would like to—

Hon. Mr. GARSON: To get the length of time he was in prison before he became insane?

Mr. BOISVERT: Yes.

Hon Mr. GARSON: In each one of these cases?

Mr. BOISVERT: Yes.

Hon. Mr. GARSON: Very well.

The PRESIDING CHAIRMAN: Mr. Mitchell?

Mr. MITCHELL (*London*): I just have one question. Who gives the ultimate order as to ticket of leave or parole, is that the minister himself?

Hon. Mr. GARSON: No, it is given in the name of the Governor General, you see, it is a royal prerogative of mercy and is given in the name of the Governor General.

Mr. MITCHELL (*London*): Yes, but who is the final body or authority that considers it?

Hon. Mr. GARSON: In the case of capital cases, as I indicated this morning, it is the Governor General in Council. In all cases other than capital cases it is the responsible minister who at the present time is the Solicitor General.

Mr. MITCHELL (*London*): That also applies to the question of remission, commutation of the death penalty?

Hon. Mr. GARSON: Yes, in every commutation of the death penalty. The final say is the responsibility of the Governor in Council, that is the cabinet. With regard to all other remissions it is on the recommendation of the minister.

Mr. WINCH: That does not go before the cabinet?

Hon. Mr. GARSON: No, there are 10,000 applications for pardon every year.

Mr. MITCHELL (*London*): So that even in the case of a person convicted of murder whose sentence has been commuted to life imprisonment, any ticket of leave which might be granted to him is granted on the authority of the minister and not of the Governor in Council.

The PRESIDING CHAIRMAN: Mr. Shaw?

Mr. SHAW: When Dr. MacLeod, a medical doctor and psychiatrist, was before us, he recommended the setting up of a board of independent medical scientists, as he called them, to deal with the question of insanity at any stage if a man had been apprehended and charged with the commission of a crime. Would the minister care to say something about it? It is something about which I feel some concern, the question of dealing with a mentally ill person.

Hon. Mr. GARSON: Well, I would prefer not to comment on that for this reason, that as a matter of government policy which I announced in the House of Commons and which had the support, as I understand it, of the House, we all agreed that this joint committee should be set up to consider the three subject-matters which have been assigned to it and that the question of insanity as a defence to a charge of criminal liability and of matters related to that subject would be sent to a royal commission which has since been set up under the chairmanship of Chief Justice McRuer. We have two first-rate psychiatrists on that commission. For these reasons I would prefer to withhold my comment on these matters until after that report of this royal commission becomes available.

Mr. SHAW: I realize that. But coming to the matter of commutation, is it not true you utilize the services of one psychiatrist in helping to reach a decision?

Hon. Mr. GARSON: No, not one.

Mr. SHAW: You mentioned a doctor from Ottawa.

Hon. Mr. GARSON: Yes, but I also said in my remarks this morning that we did not limit ourselves to one if there were doubtful cases. You must also remember that by the time Dr. Cathcart gets into these cases, a number of other psychiatrists as a rule have had a go at it before and have given testimony concerning it.

Mr. SHAW: Is that apart from the actual court case?

Hon. Mr. GARSON: No, it is not.

Mr. SHAW: That is the part that disturbs me, the contradictory evidence.

Hon. Mr. GARSON: Well, I can remember cases I have had to consider within the last year where we have not been satisfied with just one phychiatrist. When you are deciding a matter of that importance and there is any doubt about the issue there is no reason why we should hold ourselves down to one psychiatrist.

Mr. SHAW: I believe you mentioned this morning that there were nine cases where appeals were granted because of new evidence. That is after the man has been sentenced to death. I think you said there were nine cases when new evidence had come to light, new trials were ordered and five had been acquitted?

Hon. Mr. GARSON: Yes.

Mr. SHAW: My comment there is this: can we conclude that as a consequence of the acquittals the five were innocent? We can, can we not?

Hon. Mr. GARSON: The only thing you can conclude is that in the previous trials the jury found them guilty and in the second trials the jury found them innocent.

Mr. SHAW: Therefore, the logical conclusion we must take is that they are innocent?

Hon. Mr. GARSON: They have not been found guilty.

Mr. SHAW: Is that the attitude? If I am charged with murder and I am convicted and subsequent evidence leads to a new trial and I am acquitted, does society have a right to say I am guilty?

Hon. Mr. GARSON: No.

Mr. SHAW: Well then, I am innocent.

Hon. Mr. GARSON: Well, you are discharged by the jury, found to be innocent by the jury and that is a complete answer. Perhaps I wrongly inferred the implication that I thought you were trying to indicate by your question, that the fact that the jury in its second series of trials acquitted the person the jury in the first trials had convicted, that there is some reflection, some unnecessary reflection on the jury in the first trial.

Mr. SHAW: Oh, no, there is no reflection. What I was coming to was this: had this new evidence not come to light before the execution, nothing could be done about it. Now, that causes me a bit of concern. Having this situation we have no way of knowing in how many cases new evidence may have come to light sometime later which may in turn have led to the new trial. I do not think you can answer that, but it causes me some concern. Mr. Garson, is the present medical doctor also a psychiatrist?

Hon. Mr. GARSON: You are referring to our own penitentiary?

Mr. SHAW: Yes.

Hon. Mr. GARSON: I might answer it in this way. Ordinarily I would say he is not, but we have, I think, at all or nearly all of our penitentiaries resident psychiatrists in addition to the doctors.

Mr. SHAW: Because what I was going to ask you was this: a man may become insane, I would assume, within a few hours of his execution as a consequence of great strain, and I wanted to be sure there was psychiatric treatment, someone to ascertain that fact, almost at the time of his execution; that is available, is it?

Hon. Mr. GARSON: Well now, I am sorry; the executions do not take place in the penitentiary. The rule is this with regard to prisoners generally; they are prosecuted by the provincial authorities. When they are convicted, if they are sentenced to a period of more than two years, they go into the custodial care of a federal penitentiary, and, therefore, under our federal jurisdiction. If they are sentenced to less than two years they go into a provincial prison and they are the responsibility of the provincial authorities. Those who are convicted of a capital offence and who are therefore merely in custody pending their execution never come into the care of the federal penitentiary at all, and therefore remain the responsibility of the provincial authorities.

Mr. SHAW: Have you any knowledge?

Hon. Mr. GARSON: As to whether they have psychiatrists in the provincial prisons, no.

Mr. SHAW: In other words, we do not know to what extent care is exercised in declaring whether or not a man is sane or insane at the time of his execution. He could become insane a day before.

Hon. Mr. GARSON: I cannot speak from personal knowledge because I have not had anything to do with the administration of provincial jails. I would be very much surprised indeed if there were any chance of the fact of a jail prisoner becoming insane not coming to the attention of the jail governor, especially if the prisoner was under sentence of death.

Mr. SHAW: Just one other question. I am seeking information. An individual is declared unfit to stand trial because of being insane; exactly what happens to him from that point on?

Hon. Mr. GARSON: He is committed to a mental institution.

Mr. SHAW: What if he is judged sane later on?

Hon. Mr. GARSON: He is brought to trial.

Mr. SHAW: Have there been any executions resulting from a man being tried after having been committed to an insane asylum and then being executed?

Hon. Mr. GARSON: I could not answer that question offhand without having the records carefully searched. I would question very much whether there was. As a rule the criminally insane do not recover as often as your question might imply.

Mr. SHAW: I have read where individuals have been brought to trial; there is no evidence they were insane at the time of the offence, it was just that they were insane afterward, and I have seen cases where they have been sent to trial and I just wondered what happened to them afterward.

Mr. WINCH: Those figures would not be here because if he is found insane he is still under the jurisdiction of the province and enters a provincial mental institution and he never comes to the attention of the federal authorities.

Hon. Mr. GARSON: He might in this way: if he is insane at the time of his trial he is not in a position to make a fair and competent defence; he cannot instruct counsel, so it is not fair to try him. If being insane the prisoner instead of being tried is committed to a provincial mental hospital and if later he becomes sane then the charge can be proceeded with against him.

Mr. WINCH: That is by the province?

Hon. Mr. GARSON: By the province. Being sane he can then instruct counsel. The case goes ahead. If the jury acquits him, that is the end of the matter. If the jury convicts him, and after they convict him of murder then the case in the ordinary course of events, comes before the Governor in Council as to whether we should commute. In that question of commutation his mental condition at the time the offence was committed and at the time the execution would take place, are relevant matters for us to consider.

Mr. SHAW: Can you recall any such case?

Hon. Mr. GARSON: No, I cannot.

The PRESIDING CHAIRMAN: Mr. Blair?

Mr. BLAIR: One thing that has been mentioned here on several occasions is the extreme reaction of public opinion on the eve of an execution. It has been indicated that it has a detrimental effect on communities, particularly small ones, and I wonder if this reaction is ever taken into account in connection with commutation?

Hon. Mr. GARSON: Yes, we take it into account as a factor, but just one factor that we weigh with all the others in reaching a judgment.

Mr. BLAIR: There has been mention made too of the question of executing the death sentence on women. I notice from the statistics that very few women are executed in Canada. I wonder if you would be prepared to comment on any general practice which may have developed with reference to the execution of women?

Hon. Mr. GARSON: Well, the question of the commutation of the death penalty imposed upon a woman is one which we judge, I think it is fair to say, with more leniency that we would in the case of a man, I think it is also correct to say that in most cases the moral culpability of the crime of murder as committed by a woman as a rule is less than that of a man, speaking generally. That does not mean that there are not cases where sentence of death imposed upon a woman is not commuted. The committee may recall the lady who was involved in this bomb explosion on the aeroplane—we did not commute her death sentence.

Hon. Mrs. HODGES: Mrs. Pitre.

Hon. Mr. GARSON: As in other cases it depends on the circumstances, but we try, as the statistics show, to be at least as merciful as with men.

Mr. BLAIR: One suggestion made here—and it was one, which I think troubled some members of the committee—was to the effect that, in some instances, persons were not adequately defended on a capital charge. I notice table K gives the experience of defence counsel acting in capital cases. From your experience in these matters, have you formed the impression that people charged with murder are adequately defended?

Hon. Mr. GARSON: Well, I must say that is an opinion I would hesitate to express. The examination of the transcripts of these trials gives one a fairly accurate impression of the theory of the defence which the defending counsel sets up; but without being in the position of confidential relationship as a solicitor to his client, it is pretty hard to form an opinion as to the adequacy of that defence theory and the skill with which it has been presented without knowing as a direct matter between solicitor and client what the defence counsel had to contend with in defending his client. I do not think I would personally want to add very much to what table K discloses and you can see from it the majority of the counsel who acted for the accused in these cases are men of very considerable experience.

Mr. WINCH: Can you say, Mr. Minister, as to how it was possible for a person to go before a court on a charge of murder and not have any counsel as this indicates?

The PRESIDING CHAIRMAN: That is one case.

Mr. WINCH: Yes, just how would a judge allow a person to come before a court on a charge of murder and not have counsel unless, of course, he was a lawyer, which I do not know.

Hon. Mr. GARSON: No, this was not a lawyer. In that case the accused, if I remember rightly, gave himself up. He not only gave himself up but he admitted he had committed another crime as well as this one and had got away with it, another murder. He said, in effect, "I won't have a counsel, I don't want to have a counsel because I feel I have this coming to me and I want to get it over with as quickly as I possibly can."

Hon. Mrs. HODGES: That was comparatively recently, was it not?

Mr. WINCH: Would he have psychiatric examination?

Hon. Mr. GARSON: Certainly, that is one of the first things that occurred to us, but he was carefully examined by a psychiatrist and the psychiatrist said that he was perfectly sane. His was a very honourable, honest, forthright statement; I think one of the most honest statements I have ever read. He was quite content. He was not exactly remorseful; I think he was more disgusted with himself and that is what he wanted to do, get it over with as quickly as possible.

Mr. SHAW: Was he executed?

Hon. Mr. GARSON: Yes.

Mr. LUSBY: In that case would the judge himself not decide whether the plea of guilty would be accepted.

Hon. Mr. GARSON: As I recall it, he tried to keep this man from making the plea but the prisoner said in effect, "No, I am guilty of this offence and the other one besides that was not brought home to me, and I want to expose and expiate my crimes."

Mr. WINCH: In a case like that is a very thorough study made for confirmation of his statement in order to prove that the man is not just trying to use this method for the purpose of committing suicide?

Hon. Mr. GARSON: Yes, of course, this was in the province of British Columbia and Mr. MacLeod, who knows more about the case than I do, tells me that all the evidence by which he was convicted was adduced by the Crown. In view of the rather extraordinary attitude which the prisoner had taken the Crown felt they had to proceed very carefully and prove the case regardless of the accused's attitude.

The PRESIDING CHAIRMAN: Mr. Blair, you had a few questions?

Mr. BLAIR: Mr. Garson, there are two questions which arise from the testimony before the United Kingdom royal commission, and I raise them almost to have them disposed of. The first was that there might be some advantage in publishing the reasons for commutation and the second was that the whole function of commutation, rather than being left with a minister of the Crown, should be reserved for a panel of experts in the nature of a parole board. Would you care to comment on these two suggestions?

Hon. Mr. GARSON: Well, in the first place, as regards publication of the reasons for commutation, I would not think that would be helpful. I think the arrangement we have now works very well indeed. I think we go to great pains to see that justice is done to the prisoner and I do not honestly believe that if these reasons for commutation were published, discussed, carried in the newspapers, and the like that that would improve matters or make for any greater consideration or justice for the prisoner.

The second point was as to having a panel of experts. Well, if we were to follow that suggestion we would require legislation. I have not had an

opportunity of considering the question; for, the question does arise in my mind as to whether we would not have to have a constitutional amendment before the function of commutation could be assigned to such a panel of experts. The authority for the Governor General to discharge the Royal Prerogative of Mercy is contained in the instructions which he receives from Her Majesty. That is the legal basis for the action upon which the Governor General's Council advises him. How that function would be transferred from the Crown as discharged by Her Majesty's Viceroy in Canada in council and delegated to a panel of experts would pose a legal and constitutional question of considerable difficulty, I should think. But, even it were done, and leaving aside the question of the legal difficulty, to deal more with the merit of the suggestion, I cannot see where a body of experts would offer any better hope of reaching a more sound judgment than that of the Governor in Council, having regard to the fact that the issue which is under consideration is—except in those cases where scientific questions such as those of insanity are involved—a straight question of the exercising of good judgment on the basis of a set of facts.

Mr. WINCH: Could I follow up with a question on the same thing, on this matter of a parole board. Could I put it this way: am I correct, Mr. Garson, in view of the fact that Mr. MacLeod is here, who I believe is in charge of the Remission Service, that he and his staff are the same ones who go over all this material that comes to you on capital punishment?

Hon. Mr. GARSON: That is right.

Mr. WINCH: My question is: how much reading time and study can that same staff give when you say that they also have to handle around 10,000 applications for pardon in a year?

Hon. Mr. GARSON: We have quite a fair sized staff. The men who gather that information and handle the cases involving capital punishment are some of the heads, the more responsible men of the department—they prepare the brief which is presented to the responsible minister, and he considers the brief and all the other data, and then takes his own recommendation and that of his officer into the cabinet. This brief which they prepare is an analysis of all the evidence which has been given at the trial with copious quotations of those parts which are considered more relevant. The evidence of every witness that appears is analyzed and the points that are established by that witness are listed and the critical points which the evidence established are pointed up, and in that sense one could say in all truth that they were experts in the gathering and weighing of such facts. That is all that the officers of the Remission Branch do.

Mr. SHAW: They do not make any recommendation?

Hon. Mr. GARSON: Yes. They make a recommendation to the minister. Then the minister goes over all the material that they have submitted to him and he forms his own conclusions. When he goes to his colleagues in the cabinet council he outlines the facts of the case and then he concludes his review of the case by saying in effect "My officers recommend commutation," or "my officers recommend that the law should take its course;" and he adds "I concur with their recommendation"; or, "I am sorry I cannot concur with their recommendation;" This is not a very common case; but the minister sometimes feels he must say in effect "I cannot concur in their recommendation. My reason is I think that on such and such a point their judgment is wrong, and I think the correct judgment on these points is as follows." Now, in such a case the minister's colleagues have to decide between his views and his officer's views.

Mr. WINCH: Could we see a sample of such a brief without making public whose brief it is?

Hon. Mr. GARSON: Yes, but I think we should produce it at an in camera session. We try to treat information relating to these prisoners as confidentially as if they were ordinary citizens.

By Mr. Blair:

Q. Mr. Garson, the proceedings of this committee I imagine will be quite widely publicized and there will be a tendency to compare the statistics put on record here with the statistics adduced in the United Kingdom. For that reason, I would like you to comment, if you would, on table III which appears on page 13 of the United Kingdom Royal Commission Report and table D of your own statistics. These tables show the proportion of sentences of death commuted. In the United Kingdom the percentage from the year 1900 to 1949 was 45·7 per cent, and in Canada the percentage for the 20 year period 1930-1949 was 21·6 per cent.

Hon. Mr. GARSON: Yes.

Mr. BLAIR: Now, imagine that these figures are explainable with reference to your table G which refers to types of murders committed, and the comparable table appearing on page 304 of the United Kingdom Royal Commission Report.

Hon. Mr. GARSON: Yes, that is right. This is a very interesting point. If the members will have a look at this table G they will see listed there under different headings the victims of convicted murderers. I would like you to look at the first seven columns where the victims are respectively wife, husband, parent, sweetheart, mistress, children, or sexual assaults. In other words these murders arise out of family or sexual relationships. If I take these figures off and add this very rapidly, in the United Kingdom they had 210 wives who were victims of murder, 14 husbands, 320 parents, 120 sweethearts, 184 mistresses, and 193 children, categorized into murders of children under one year (77), and over one year (85) and in connection with sexual assaults, over one year (31). For murder in connection with other sexual assaults, there were 44 victims. Now, that makes up a total of 785 murders arising out of family and sexual connections out of the grand total of 1,210 murders. In Canada under these same headings, there are 25 wives, 5 husbands, 10 parents, 4 sweethearts, 15 mistresses, 3 children, and 18 sexual assaults, or 80 out of 308. This is a substantially smaller percentage in Canada than in Great Britain.

But, when you come to murder committed in connection with robbery you find that in Canada there are 100 out of 308 or nearly 33 per cent; and in the United Kingdom 161, that is 66 women and 95 men out of 1,080, or about roughly 13 per cent.

Mr. WINCH: How does that break down between cold blooded murder and murder of passion?

Hon. Mr. GARSON: That is what I am getting at. A family murder where there is no money motive involved arises out of the passion of love or the passion of hatred, or in other words out of just the emotions ordinarily associated with family connections or with sex. That is one thing; and a murder which is committed in connection with robbery which in the majority of cases is a straight cold blooded premeditated act, is another. In the United Kingdom the murders represented by these family affairs outnumber those committed for reasons of robbery by a large margin.

Mr. WINCH: They do in Vancouver too.

Hon. Mr. GARSON: Whereas in Canada it is the other way about.

Hon. Mrs. HODGES: Do you not think that the strain of the war years might have some effect on the emotions?

Hon. Mr. GARSON: This British record goes back to 1900.

Hon. Mrs. HODGES: Yes, but I notice that in 1949 they were very strong. That may have some effect on it.

Hon. Mr. GARSON: It may.

Hon. Mrs. HODGES: Because of family tensions and such.

Hon. Mr. GARSON: This comparison seems to support the view stated by some of the witnesses before the British Royal Commission, that the statistics of one country are of little assistance to one who is trying to reach a sound judgment as applied to another country.

Mr. WINCH: But it does make a difference in your cabinet, as to whether it was a cold blooded murder or one of passion?

Hon. Mr. GARSON: Yes. And, to answer Mr. Blair's question, one reason why we have a lower percentage of commutation than in Great Britain is we are dealing with murders a much larger percentage of which have been those associated with robbery for example, that are planned and premeditated. In the proper exercise of commutation such types of murder will deserve a lower rate of commutation generally speaking than will those murders which arise out of family and lovers quarrels, jealously, and the like.

Mr. WINCH: Is it possible to explain why you say that for Canada—I admit I do not know. But, the other day when Chief Mulligan of Vancouver was before the committee, the committee asked the chief if he could let us have the information from 1944 until 1953 as to the murders in Vancouver and those which he maintained were cold blooded and brutal murder and those which were from emotion or jealousy, and he has been kind enough to do that and given the names of all the victims in that period until 1953 of homicides in Vancouver.

Hon. Mrs. HODGES: In what period?

Mr. WINCH: 1944 to 1953.

Mr. BROWN (*Essex West*): Is that material before the committee?

Mr. WINCH: Yes. He sent me a copy as well. I asked the question, and a copy was sent to me direct as well. In that period until 1953 there were 53 homicides in Vancouver; 17 he classifies as cold blooded murder and 36 as murders of passion. That is not the pattern of Canada, you say?

Hon. Mr. GARSON: No, and you can see from that that it would be quite wrong to think, in so far as these facts that we have been discussing have a bearing upon the question of whether the proper policy for a country was capital punishment or not capital punishment—it would be quite wrong to think that because capital punishment might be a proper penalty for the prevalent type of murder in that country, it would follow logically that capital punishment would be a proper type of penalty for a quite different type of murder prevalent in another country. In other words, the only way in which, in my humble opinion, we can reach a wise judgment in this matter is to look at the facts in Canada and decide what, in relation to the Canadian facts, seems to be the proper solution in Canada. I think most of us would regard these crimes of passion as being in a totally different category and I would say, if one can generalize in these matters, that they are socially, less harmful than the cold blooded premeditated gangster, bank robber, type of murder. We have seen in cities to the south of us here what a state of lawlessness can develop from a lack of certainty of punishment; and that even where capital punishment was nominally the punishment, the lack of certainty of it robbed it of its deterrent effect. As Chief Shea the other day said in Detroit they had had 4 of their men murdered and none at all across the river in Windsor. I know it is not very scientific to say that that contrast is solely due to there being capital punishment in Windsor and no capital punishment in Detroit, but these facts must be one important factor I would think.

Mr. BLAIR: There is just one further question. I personally am aware of the amount of time which has been spent in preparing the statistics in the form in which they have appeared today, and they run back to 1930. I wondered if further statistics along these lines are prepared for hearings before this committee if an arrangement might be worked out whereby they could be filed with the committee and appended to the proceedings.

Hon. Mr. GARSON: Yes.

Mr. CAMERON (*High Park*): I would like to thank the minister for taking us behind the doors of the council chamber in a frank and open manner and ask him if I am correct in my thinking that the place of the execution and the revulsion of a certain community against the execution of a prisoner might be considered one of the factors in deciding whether or not the sentence would be commuted, and if it was one of the factors that was considered, then it would not be the decisive factor unless everything else was equal. I would not like to think that because one person was charged of murder and going to be hanged in a certain community that a similar sentence might be commuted in another community.

Hon. Mr. GARSON: I am glad that you brought it up because in reference to public opinion I did not intend to include the place of execution. What I had in mind was cases like the Bentley case. You may have a case involving two culprits; one of greater apparent culpability by a wide margin than the other, and it may be through a series of misadventures that in the trial of the more culpable criminal that there is some slip-up in the prosecution and an acquittal is brought in; and then on a later trial of the man who is obviously much less culpable the jury brings in a verdict of murder. In a case of that sort where there is a strong public opinion, a great feeling of public revulsion, to the fact that the man who is less culpable is being hanged and the other who is much more guilty is getting off, the problem that that would pose for the Governor in Council would be as to whether as between the two criminals it would not be a more salutary disposition of the case to grant commutation to the man who was much less culpable and not make a martyr of him and have a general feeling amongst the whole country that the administration of justice had been most unfair to this unfortunate man. That particular question would be taken into account by the Governor in Council along with all the other circumstances of the case. It would not dominate, but it would be one factor to be taken into consideration.

Mr. CAMERON (*High Park*): In other words, the members of the cabinet are human beings and not icicles. Would that be a short answer?

Hon. Mr. GARSON: Yes.

Mr. CAMERON (*High Park*): There has been some comment made about not giving publicity to the decisions on commutation. Is it not true that in the Bentley case that the question was asked in the House as to the reason why here was a refusal to reduce the sentence and one of the reasons advanced was that as persons under 18 years of age were not liable to be hanged in Great Britain that criminals who practise crimes of violence might use them to do the gunman's work and the older one may have a chance to escape scot-free?

Hon. Mr. GARSON: That is quite right, but as I rcall it the question was not asked until after the event.

The PRESIDING CHAIRMAN: After the execution.

Hon. Mr. GARSON: Yes.

Mr. CAMERON (*High Park*): All I know is what I read in the newspapers. But, my recollection from reading it in the newspapers was that the person had surrendered himself into custody and was in custody when the murder took place.

Hon. Mrs. HODGES: No. The policeman had hold of him and he told the other fellow to shoot.

Mr. CAMERON (*High Park*): He was in custody when the shooting took place.

Hon. Mr. GARSON: He was in the custody of the policeman.

Mr. CAMERON (*High Park*): Yes.

Hon. Mr. GARSON: Yes.

Mr. CAMERON (*High Park*): I am not satisfied myself that justice was done in that case.

Hon. Mr. GARSON: All I can say about that case was that I was delighted that it was not I who had to make the decision. It was an extremely difficult one.

Mr. CAMERON (*High Park*): Some one said something about the man outside the bank or the place being robbed not being equally guilty with the man inside who committed the murder, but I recall Colonel Basher saying that he thought there was a very deterrent effect in that phase of the law because people who might be inclined to get mixed up with crimes of violence would not associate themselves with people known to be trigger happy, so that to that extent it is deterrent.

Hon. Mr. GARSON: Yes.

Mr. CAMERON (*High Park*): I gathered that when the judge and the jury have found the accused has not established that he is not guilty by reason of coming within the M'Naghten Rules, if there is any doubt about it it may be that when it gets before the cabinet it is a case where the psychiatrist says he cannot say that he was not but possibly he was incapable of forming intention.

Hon. Mr. GARSON: Your question is what?

Mr. CAMERON (*High Park*): I was wondering if the obvious result is that it is not a case of certainty; it is a case of possibility. Possibly he was incapable of forming intent. He may have been capable, but there is a possibility that he was not.

The PRESIDING CHAIRMAN: You mean that you start out with a presumption of insanity when the department is considering the case?

Mr. CAMERON (*High Park*): Yes.

Hon. Mr. GARSON: I do not know that I would say that. In cases where insanity is raised by the accused as a defence to a trial itself, the defence in order to bring itself within the rule of the M'Naghten case has to prove that the accused was so insane that he did not understand the nature and quality of the act and that he did not know that it was a wrongful act that he was committing. Now, if the accused is found guilty by the jury, then what the Governor in Council has to decide is as to whether the mental aberration of the accused, notwithstanding that it did not come within that rule in the M'Naghten case, was still sufficiently serious to warrant commutation.

Mr. CAMERON (*High Park*): That is just putting my thought in different and probably more guarded words than my own.

Mrs. SHIPLEY: Just one short question. Are we obtaining the statistics in the cases where the death penalty has been commuted to life imprisonment to show how many of these prisoners have attempted to commit a second murder while in the penitentiary or during a period of escape?

Hon. Mr. GARSON: We are getting that.

Mr. WINCH: Just one more question. I appreciate the two very informative sessions we have had today, and I will ask this question while Mr. MacLeod is here. After there has been the granting of executive clemency, the jail sentence then automatically comes to the branch of remission of which

Mr. MacLeod is the head, and does Mr. MacLeod's branch automatically review the cases of these men for the purpose of seeing as to whether or not there should be any further clemency, and if so what are the periods of the review?

Hon. Mr. GARSON: You mean while they are in custody?

Mr. WINCH: Yes. After executive clemency is granted and the accused is sentenced to life imprisonment that is the end as far as the cabinet are concerned, and it then comes under the Remission Branch if something further is to be done. Is there an automatic review to see if there should be any more clemency and how often does that review take place?

Hon. Mr. GARSON: Perhaps I would illuminate that matter a bit if I were to explain that by that time the prisoner has gone into the federal penitentiary system and when he comes in there we have in addition to the penitentiary psychiatrist another university graduate—usually a trained psychologist who is a classification officer. He keeps a card index system and has an interview with this man in the same way the personnel officers of the more intelligent industries interview employees. This classification officer enters the criminal's family history, education, aptitudes, deficiency or competence, on his record. That is his card while he is in prison. Then, this classification officer is in periodical contact with all the convicts all the time they are there and he is available for consultation. If they wish to take advantage of correspondence or vocational training courses while in penitentiary they consult him. He keeps constant tab on all the inmates of his penitentiary. That is the responsibility that we pay him to discharge. It is originally his recommendation—not only in respect of these commuted capital cases, but in respect of all prisoners—on which we in part base our judgment whether it is safe to let the convict be discharged on ticket of leave. We have found that of those who take our vocational training classes and who are subsequently discharged from the penitentiary that over 80 per cent make good. This is a very high rate of reformation. One of the main purposes of having the criminal in the penitentiary is to reform him, but reformation is a matter of expert judgment on the part of people who are trained in these fields and in sufficiently close contact with the prisoner to form intelligent judgments concerning them. We try not to have the prisoners discharged from the institution until we are sure that they can make good.

Mr. WINCH: Perhaps I have not made it quite clear. Supposing some one has had executive clemency and has been in the penitentiary for 12 years, would he have to make application: now, I should have consideration for a ticket of leave. Or would you be receiving every three years or at the end of 12 years a recommendation from your classification officer on this man or does he have to make recommendation that his case be sent down to the Remission Branch for consideration?

Hon. Mr. GARSON: You mean must somebody initiate it?

Mr. WINCH: Yes.

Hon. Mr. GARSON: I would not like to state it positively because this is not a matter of internal prison matters.

Mr. WINCH: I am not discussing it from that angle, but from the angle of the person who committed murder and has been sent in now for life?

Hon. Mr. GARSON: While he may have committed a murder, he is a prisoner just like the man who has robbed a bank or who committed bigamy and what we are concerned with is how quickly we can reform the prisoner and put him in a position in which it would be safe to turn him out into society again. We have a heavy population in the prisons because although the rate of recidivism in the penitentiaries has been held and is on the decline to some extent, the rate

of new crime has been growing in the last few years and there is no incentive to keep any of the prisoners in any longer than necessary before we can safely discharge them.

Mr. WINCH: How do you get notice here in Ottawa on these 23 which you let out—they go from 9 years up to 18 years. Is it automatic, or did they have to apply?—A. That is a point I am trying to get.

Mr. MACLEOD: Our ordinary routine practice in remission is based upon applications by the inmate or by someone on his behalf. The application on his behalf may be by a relative it may be by some interested citizen in the community it may very well be an officer of the institution or the penitentiary who has seen this man make good progress and thinks his particular case should be investigated again to determine whether or not there should be remission of sentence or release on ticket-of-leave. It would be most unusual—perhaps I should say impossible but I will limit it to unusual—for a person serving a life sentence which is in effect what a person is serving when his sentence of death has been commuted, it would be most unusual for that man to go unnoticed; it would be impossible for him to go unnoticed because we will have in the remission service a gradually increasing file in relation to him. We will have the reports of the classiffication officer who is employed in the penitentiary and to whom the minister has referred. In other words, our own representatives visit the institution twice a year to interview any inmates who wish to interview our representative at that time and have a face to face talk with our representative. We have a permanent representative on the west coast in Vancouver and another permanent representative in Montreal. We have our own staff here in Ottawa who are quite close to two institutions at Kingston. We are planning, of course, to increase that staff as we get capable men to do that. But, to get back to the point, while there is not an automatic review of these cases such as there is in the case of the habitual criminal who is serving an indeterminate sentence, or the criminal sexual psychopath in respect to whom there is a statutory declaration that his case be reviewed once every three years there is not, in the case of the prisoner for life, an automatic review, but there is an adequate review.

Mr. LUSBY: If the case is reviewed and it is decided not to let him out, is there any time that must elapse before it can be reviewed again?

Mr. MACLEOD: No. He can apply as often as he wants, but if on a life term he has served ten years and his case has been reviewed and he has been informed that it is not found to be possible to recommend after investigation that he be released, if he writes again in six months it is obvious that we will not start an investigation at that time, but we will keep that case in mind and will be adding reports of the classification officer and instructor, and our own representatives who have visited him and so on, and in another two years we will probably conduct another investigation.

The PRESIDING CHAIRMAN: Mr. Minister, before we adjourn, I want to thank you very much on behalf of the committee for your presentation here today.

Hon. Mrs. HODGES: Hear, hear.

The PRESIDING CHAIRMAN: Mr. MacLeod, I want to thank you for your contribution.

APPENDIX A

This appendix contains statistics relating to capital cases during the period 1930-1949 and, in some cases, during the period 1939-1952. They are compiled from the records of the Remission Service of the Department of Justice. In preparing the statistics each case has been treated as having been dealt with, by execution or commutation or by the court of appeal, as the case may be, in the same year as that in which the sentence of death was imposed. That is to say, if a sentence of death was imposed, for instance, in November of a particular year and was commuted in February of the following year, the case is treated, for the purpose of these statistics, as having been one where the sentence was imposed and commuted in the same calendar year. Other statistics that may be available to the Committee may not have been prepared on this basis.

TABLE A.

DISPOSITION OF CAPITAL CASES (1930-1949)

This table is the counterpart of Table I in Appendix 3 of the United Kingdom Royal Commission Report, at pages 298-301. "Otherwise" means otherwise disposed of by the court of appeal, i.e., by quashing the conviction and entering a verdict of not guilty or ordering a new trial or substituting a verdict for a lesser offence.

M.—Male
F.—Female

Year	Sentenced to death		Executed		Commuted		Otherwise	
	M.	F.	M.	F.	M.	F.	M.	F.
1930	23	0	13	0	5	0	5	0
1931	32	0	25	0	3	0	4	0
1932	22	1	13	0	5	0	4	1
1933	21	0	16	0	3	0	2	0
1934	23	3	11	1	4	1	8	1
1935	14	3	11	1	2	1	1	1
1936	21	1	14	0	3	1	4	0
1937	14	0	7	0	2	0	5	0
1938	18	1	8	1	8	0	2	0
1939	10	1	4	0	3	1	3	0
10 yrs	198	10	122	3	38	4	38	3
1940	19	2	9	0	6	0	4	2
1941	15	0	7	0	7	0	1	0
1942	12	1	6	0	1	0	5	1
1943	10	0	7	0	1	0	2	0
1944	18	0	9	0	4	0	5	0
1945	19	0	10	0	5	0	4	0
1946	24	5	12	1	7	1	5	3
1947	19	0	10	0	3	0	6	0
1948	26	0	13*	0	5	0	8	0
1949	29	0	11	0	6	0	12	0
10 yrs	191	8	94	1	45	1	52	6

* Includes one condemned person who committed suicide.

TABLE B.

PROPORTION OF EXECUTIONS (1930-1949)

This table shows the number of persons who, during the relevant period, were executed as a result of the imposition of sentence of death upon them. The number of cases disposed of by appeal courts and by commutation will be found in Tables C, D and E.

M.—Male
F.—Female
T.—Total

Period	(1) Sentenced to death			(2) Executed			(3) (2) as a percentage of (1)		
	M.	F.	T.	M.	F.	T.	Per cent M.	Per cent F.	Per cent T.
1930–1939	198	10	208	122	3	125	61·6	30·0	60·1
1940–1949	191	8	199	94*	1	95	49·2	12·5	47·7
TOTAL	389	18	407	216	4	220	55·6	22·3	54·0

* Includes one condemned person who committed suicide.

TABLE C.

PROPORTION DISPOSED OF BY APPEAL COURTS (1930–1949)

This table shows the number of persons who, during the relevant period, had their convictions quashed by appeal courts and in respect of whom a verdict of not guilty was entered, a new trial ordered or another verdict substituted.

M.—Male
F.—Female
T.—Total

Period	(1) Sentenced to death			(2) Disposal by Court of Appeal			(3) (2) as a percentage of (1)		
	M.	F.	T.	M.	F.	T.	Per cent M.	Per cent F.	Per cent T.
1930–1939	198	10	208	38	3	41	19·2	30·0	19·7
1940–1949	191	8	199	52	6	58	27·2	75·0	29·2
TOTAL	389	18	407	90	9	99	23·1	50·0	24·4

TABLE D.

PROPORTION OF COMMUTATIONS (1930-1949)

This table shows the number of persons whose sentences were, during the relevant period, commuted to sentences of life imprisonment. It is the counterpart of Table III of the United Kingdom Royal Commission Report, at page 13. This table is to be distinguished from Table E which deals *not* with all sentences of death imposed during the relevant period, but only with those that came before the Governor in Council for decision on the question of commutation.

M.—Male
F.—Female
T.—Total

Period	(1) Sentenced to death			(2) Commuted			(3) (2) as a percentage of (1)		
	M.	F.	T.	M.	F.	T.	Per cent M.	Per cent F.	Per cent T.
1930–1939.....	198	10	208	38	4	42	19·2	40·0	20·2
1940–1949.....	191	8	199	45	1	46	23·6	12·5	23·1
TOTAL.....	389	18	407	83	5	88	21·3	27·7	21·6

TABLE E.

PROPORTION OF COMMUTATIONS (1930–1949)

This table shows the number of persons whose sentences were, during the relevant period, commuted to sentences of life imprisonment by the exercise of the royal prerogative. It is to be noted that the figures in this table do not take into account cases disposed of by appeal courts. This table relates only to cases that were dealt with by the Governor in Council.

M.—Male
F.—Female
T.—Total

Period	(1) Considered by Governor in Council			(2) Commuted			(3) (2) as a percentage of (1)		
	M.	F.	T.	M.	F.	T.	Per cent M.	Per cent F.	Per cent T.
1930–1939.....	160	7	167	38	4	42	23·7	57·1	25·2
1940–1949.....	139	2	141	45	1	46	32·4	50·0	32·6
TOTAL.....	299	9	308	83	5	88	27·7	55·5	28·5

TABLE F.

RECOMMENDATIONS AS TO MERCY (1930-1949)

This table is the counterpart of Table I of the United Kingdom Royal Commission Report, at page 9.

M.—Male
F.—Female

Year	Recommended to Mercy										Not Recommended to Mercy							
	Convicted and sentenced to death		Total		Commuted		Executed		Disposed of by appeal court		Total		Commuted		Executed		Disposed of by appeal court	
	M.	F.	M.	F.	M.	F.	M.	F.	M.	F.	M.	F.	M.	F.	M.	F.	M.	F.
1930 – to – 1939 –	198	10	38	4	23	3	11	0	4	1	160	6	15	1	111	3	34	2
1940 – to – 1949 –	191	8	49	5	24	0	8	0	17	5	142	3	21	1	86	1	35	1
Total.....	389	18	87	9	47	3	19	0	21	6	302	9	36	2	197	4	69	3

M.—Male
F.—Female
C.—Commutation
E.—Execution

TABLE G.

ANALYSIS RE VICTIMS OF CONVICTED MURDERERS (1930–1952)

This table is the counterpart of Table 4 in Appendix 3 of the United Kingdom Royal Commission Report, at pages 304–306

—	For murder of wife		For murder of husband		For murder of parent				For murder of sweetheart				For murder of mistress				For murder of children				Sexual Assault				Robbery				Revenge or Jealousy				Escaping Custody or arrest				For murder of policeman				Miscellaneous				Total
	M.		F.		M.		F.		M.		F.		M.		F.		M.		F.		M.		F.		M.		F.		M.		F.		M.		F.		M.		F.		M.		F.		
	C.	E.	C.	E.	C.	E.	C.	E.	C.	E.	C.	E.	C.	E.	C.	E.	C.	E.	C.	E.	C.	E.	C.	E.	C.	E.	C.	E.	C.	E.	C.	E.	C.	E.	C.	E.	C.	E.	C.	E.	C.	E.	C.	E.	
1930	...	1	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	3	6	...	...	2	3	...	...	...	...	...	...	...	1	...	...	...	2	...	...	18
1931	1	2	...	...	...	2	...	...	...	...	...	...	...	1	...	...	...	...	...	...	...	...	...	...	...	8	...	...	1	5	...	...	...	...	...	...	...	2	...	...	1	5	...	...	28
1932	...	...	...	...	...	...	...	...	...	...	...	...	...	3	...	...	...	...	...	...	...	...	...	...	...	6	...	...	...	...	...	...	...	...	...	...	...	1	...	...	5	3	...	...	18
1933	1	...	...	...	1	1	...	...	...	...	...	...	...	1	...	...	...	1	...	...	...	...	...	...	...	7	...	...	...	6	...	...	...	...	...	...	...	...	...	...	1	...	...	...	19
1934	1	1	1	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	4	...	...	1	2	...	...	...	...	...	...	...	1	...	...	2	3	...	1	17
1935	...	1	1	1	...	2	...	...	...	...	...	...	...	...	...	...	...	1	...	...	...	...	...	...	...	1	...	...	...	1	...	...	...	...	...	...	1	4	...	...	1	1	...	...	15
1936	...	2	1	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	1	...	...	...	1	4	...	...	...	2	...	...	1	...	...	...	...	1	...	...	1	4	...	...	18
1937	...	1	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	1	...	...	...	1	1	...	...	...	1	...	...	...	...	...	...	...	2	...	...	1	1	...	...	9
1938	2	1	...	1	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	1	4	...	...	1	...	...	...	...	...	...	...	...	...	...	...	4	3	...	...	17
1939	1	...	...	...	...	...	...	...	1	...	...	...	...	2	...	...	...	...	...	...	1	...	...	...	...	1	...	...	1	...	...	...	...	...	...	...	...	...	...	...	...	...	1	...	8
Total 10 yrs	6	9	3	2	1	5	...	...	1	...	...	...	...	7	...	...	...	2	...	...	3	...	...	...	6	42	...	...	6	20	...	...	1	...	...	...	1	12	...	...	16	22	1	1	167
1940	...	1	...	...	...	...	...	...	...	...	...	...	...	1	...	...	...	...	...	...	...	...	...	...	4	3	...	...	1	1	...	...	...	...	...	...	...	1	...	...	1	2	...	...	15
1941	1	2	...	...	...	...	...	...	1	...	...	...	2	...	...	...	...	...	...	...	1	...	...	...	1	4	...	...	...	...	...	...	1	...	...	...	...	...	...	...	1	...	...	...	14
1942	...	1	...	...	...	1	...	...	...	...	...	...	...	...	...	...	...	...	...	...	2	...	...	...	...	1	...	...	...	...	...	...	...	...	...	...	...	...	...	...	1	1	...	...	7
1943	...	...	...	...	...	...	...	...	1	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	7	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	8
1944	1	1	...	...	...	...	...	...	...	...	...	...	...	1	...	...	...	...	...	...	1	...	...	...	1	5	...	...	1	1	...	...	1	...	...	...	...	...	...	...	...	...	...	...	13
1945	...	...	...	...	2	1	...	...	1	...	...	...	...	...	...	...	...	...	...	...	1	2	...	...	1	3	...	...	...	1	...	...	...	...	...	...	...	...	...	...	...	3	...	...	15
1946	1	...	...	...	...	...	...	...	...	...	...	...	1	...	...	...	1	...	...	...	...	2	...	...	1	2	...	1	1	1	...	...	...	...	...	...	...	1	...	...	2	6	1	...	21
1947	...	...	...	...	...	...	...	...	...	...	...	...	2	...	...	...	...	...	...	...	...	5	...	...	1	4	...	...	...	1	...	...	...	...	...	...	...	...	...	...	...	...	...	...	13
1948	...	1	...	...	...	...	...	...	...	...	...	...	...	1*	...	...	...	...	...	...	...	1	...	...	4	3	...	...	1	3	...	...	...	1	...	...	...	...	...	...	...	3	...	...	18
1949	...	1	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	7	...	...	3	2	...	...	...	...	...	...	...	...	...	...	3	1	...	...	17
Total 10 yrs	3	7	...	...	2	2	...	...	3	...	...	...	5	3	...	...	1	...	...	...	1	14	...	...	13	39	...	1	7	10	...	...	2	1	...	...	...	2	...	...	8	16	1	...	141
Total 20 yrs	9	16	3	2	3	7	...	...	4	...	...	...	5	10	...	...	1	2	...	...	1	17	...	...	19	81	...	1	13	30	...	...	3	1	...	...	1	14	...	...	24	38	2	1	308
1950	...	1	...	...	...	...	...	...	...	...	...	...	...	1	...	...	...	...	...	...	...	1	...	...	3	4	...	...	...	...	...	...	...	...	...	...	...	1	...	...	...	2	...	...	13
1951	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	1	1	...	1	2	...	...	...	5	...	...	...	...	...	...	...	...	...	...	...	1	...	...	1	1	...	1	14
1952	2	3	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	2	2	...	...	3	2	...	...	...	...	...	...	...	2	...	...	1	1	...	...	18

* This condemned person committed suicide.

TABLE H.

AGES OF PERSONS CONVICTED OF MURDER (1930-1952)

This table is the counterpart of Table 6 of Appendix 3 of the United Kingdom Royal Commission Report, at pages 308-9.

M. — Male
F. — Female
C. — Commutation
E. — Execution

Year	20 yrs. and under				21-30 yrs.				31-40 yrs.				41-50 yrs.				51-60 yrs.				Over 60 yrs.				Total
	M.		F.		M.		F.		M.		F.		M.		F.		M.		F.		M.		F.		
	C.	E.	C.	E.	C.	E.	C.	E.	C.	E.	C.	E.	C.	E.	C.	E.	C.	E.	C.	E.	C.	E.	C.	E.	
1930	1				2	7			1	2				3			1	1							18
1931					2	9				8			1	4				4							28
1932		1			3	5			1	3				2			1	2							18
1933		3			1	8			2	2				2				1							19
1934	1	1			2	5				2	1			2		1	1	1							17
1935	1				1	4	1			2				4		1		1							15
1936	2	1				6				4	1			2			1	1							18
1937	1	1			1	1				4				1											9
1938	1				3	2			1	4		1	2	2			1								17
1939					1	3			2										1			1			8
Total	7	7	0	0	16	50	1	0	7	31	2	1	3	22	0	2	5	11	1	0	0	1	0	0	167
1940	2				2	3			2	3				3											15
1941		1			2	4			1	1			3	1			1								14
1942						4								1			1					1			7
1943	1	1				6																			8
1944	2				1	7								2			1								13
1945	3	2				3			1					4			1	1							15
1946	1	1			3	8			1	2	1	1	1	1							1				21
1947	1	2			1	4				3				1			1								13
1948	4					7			1	4	*			1				1							18
1949	2				2	5				3			1	2			1	1							17
Total	16	7	0	0	11	51	0	0	6	16	1	1	5	16	0	0	6	3	0	0	1	1	0	0	141
Total 20 yrs...	23	14	0	0	27	101	1	0	13	47	3	2	8	38	0	2	11	14	1	0	1	2	0	0	308
1950	2				1	2				6				1				1							13
1951	1					5	1			2				3		1					1				14
1952	1				3	4			1	4				1			2				1	1			18

* Includes one condemned person who committed suicide.

TABLE I.

CAPITAL CASES BY PROVINCES
(1930–1949)

Province		1930	1931	1932	1933	1934	1935	1936	1937	1938	1939	Total 10 yrs.	1940	1941	1942	1943	1944	1945	1946	1947	1948	1949	Total 10 yrs.
Alberta	C.	1	1	.....	.....	1	.....	1	.....	1	.....	5	.....	.....	.....	.....	.....	.....	3	.....	1	1	5
	E.	1	4	.....	2	3	2	1	.....	.....	.....	13	.....	.....	2	1	3	.....	6	.....	2	2	16
British Columbia	C.	1	.....	.....	.....	.....	1	1	.....	.....	.....	3	1	1	.....	.....	.....	.....	.....	.....	.....	.....	2
	E.	.....	4	.....	.....	.....	2	2	.....	1	1	10	1	.....	.....	1	.....	3	.....	2	.....	2	9
Manitoba	C.	.....	.....	1	1	.....	.....	.....	.....	3	.....	5	.....	.....	.....	.....	.....	1	1	.....	.....	.....	2
	E.	.....	4	.....	2	3	.....	2	1	3	.....	15	.....	1	.....	.....	1	1	.....	2	1	.....	6
New Brunswick	C.	1	.....	.....	.....	1	.....	.....	.....	2	1	5	.....	.....	.....	.....	1	.....	1	.....	.....	.....	2
	E.	.....	.....	.....	1	.....	.....	2	.....	.....	.....	3	.....	.....	2	.....	.....	.....	1	.....	.....	2	5
Nova Scotia	C.	.....	.....	1	2	.....	.....	.....	.....	.....	.....	3	2	.....	.....	.....	.....	.....	1	.....	.....	.....	3
	E.	1	1	.....	2	1	.....	.....	1	.....	.....	6	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Ontario	C.	1	2	2	.....	1	2	.....	1	1	3	13	1	3	1	1	2	1	1	1	4	3	18
	E.	4	6	8	4	.....	4	4	2	1	2	35	5	.....	1	3	4	2	5	5	3	2	30
Prince Edward Island	C.	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
	E.	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	2	.....	.....	.....	.....	.....	.....	.....	.....	2
Quebec	C.	1	.....	.....	.....	1	.....	1	1	1	.....	5	2	2	.....	.....	1	1	1	2	.....	1	10
	E.	5	6	3	3	4	4	3	3	4	.....	35	1	4	1	2	1	3	1	1	6	3	23
Saskatchewan	C.	.....	.....	1	.....	1	.....	1	.....	.....	.....	3	.....	1	.....	.....	.....	2	.....	.....	.....	1	4
	E.	2	.....	1	2	1	.....	.....	.....	.....	1	7	2	.....	.....	.....	.....	1	.....	.....	1*	.....	4
Yukon Territories	C.	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....											
	E.	.....	.....	1	.....	.....	.....	.....	.....	.....	.....	1											
		18	28	18	19	17	15	18	9	17	8	167	15	14	7	8	13	15	21	13	18	17	141

* Committed suicide.

TABLE J.

LENGTH OF DETENTION WHERE DEATH SENTENCE COMMUTED (1930-1939)

Year sentence commenced	Number of prisoners serving commuted sentences for life whose release was authorized on a Ticket of Leave		Served 9 years		Served 10 years		Served 11 years		Served 12 years		Served 13 years		Served 14 years		Served 15 years		Served 16 years		Served 17 years		Served 18 years		Total
	M.	F.	M.	F.	M.	F.	M.	F.	M.	F.	M.	F.	M.	F.	M.	F.	M.	F.	M.	F.	M.	F.	
1930	3	.....	.....	.....	.....	.....	.....	.....	1	.....	.....	.....	1	.....	.....	.....	.....	.....	1	.....	.....	.....	3
1931	2	.....	.....	.....	.....	.....	.....	.....	1	.....	.....	.....	.....	.....	1	.....	.....	.....	.....	.....	.....	.....	2
1932	2	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	1	.....	.....	.....	.....	.....	.....	.....	1	.....	2
1933	2	.....	1	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	1	.....	.....	.....	2
1934	2	.....	.....	.....	.....	.....	1	.....	.....	.....	.....	.....	.....	.....	.....	.....	1	.....	.....	.....	.....	.....	2
1935	1	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	1	.....	.....	.....	.....	.....	1
1936	4	1	.....	.....	.....	.....	.....	.....	1	.....	.....	.....	1	1	2	.....	.....	.....	.....	.....	.....	.....	5
1937	1	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	1	.....	.....	.....	.....	.....	.....	.....	1
1938	3	.....	.....	.....	1	.....	.....	.....	.....	.....	.....	.....	.....	.....	2	.....	.....	.....	.....	.....	.....	.....	3
1939	2	1	.....	.....	.....	.....	.....	.....	1	1	.....	.....	1	.....	.....	.....	.....	.....	.....	.....	.....	.....	3
Total	22	2	1	.....	1	.....	1	.....	4	1	.....	.....	4	1	6	.....	2	.....	2	.....	1	.....	24

M. — Male
F. — Female

TABLE K.

EXPERIENCE OF DEFENCE COUNSEL ACTING FOR PERSONS CONVICTED OF MURDER (1948-1952)

Year	1 Year Experience		2 Years Experience		3-5 Years Experience		6-10 Years Experience		11-15 Years Experience		16-20 Years Experience		Over 20 Years Experience		Total
	C.	E.	C.	E.	C.	E.	C.	E.	C.	E.	C.	E.	C.	E.	
1948	.....	1	.....	.....	.....	5	1	1	1	1	.....	.....	3	5	18
1949	1	2	.....	1	1	.....	1	.....	1	1	2	.....	.....	7	17
1950	.....	1	1	1	1	.....	.....	1	.....	1	.....	4	1	2	13
1951	1	.....	.....	1	.....	5	.....	.....	1	.....	.....	2	1	3	14
1952	1	.....	1	.....	2	1	.....	1	1	2	.....	1	3	4	17
Total	3	4	2	3	4	11	2	3	4	5	2	7	8	21	79

N.B. In one case there was no defence counsel. Plea of guilty accepted.

C. — Commutation
E. — Execution

TABLE L.

APPEALS TO APPEAL COURTS
(1948–1952)

Year	Commutations			Executions		
	Appeal Court of Province	Applications to Supreme Court of Canada, which were refused	Supreme Court of Canada	Appeal Court of Province	Applications to Supreme Court of Canada, which were refused	Supreme Court of Canada
1948	4	.....	.....	7	1	1
1949	2	.....	.....	6	2	.....
1950	1	.....	.....	4	2	2
1951	2	.....	.....	7	1	3
1952	5	.....	1	8	5	.....
Total	14	.....	1	32	11	6

TABLE M.

ANALYSIS RE COMMUTATION WHERE INSANITY AN ISSUE
(1937–1952)

Year	Insanity one of several defences raised		Insanity the only defence raised	
	Commutation	Execution	Commutation	Execution
1937	1	0	0	1
1938	2	0	3	0
1939	0	1	0	1
1940	1	0	1	1
1941	2	1	3	1
1942	0	0	1	1
1943	0	1	1	0
1944	1	0	0	2
1945	2	2	2	0
1946	7	2	0	0
1947	0	0	0	3
1948	0	1	2	2
1949	2	1	4	2
1950	0	3	0	0
1951	0	0	1	1
1952	4	2	3	0
	22	14	21	15

TABLE N.

ANALYSIS RE COMMUTATION WHERE INTOXICATION AN ISSUE
(1937–1952)

Year	Intoxication one of several defences		Intoxication the only defence raised	
	Commutation	Execution	Commutation	Execution
1937	1	0	0	0
1938	0	0	0	0
1939	0	0	1	0
1940	0	1	1	1
1941	0	0	1	0
1942	0	1	0	0
1943	0	1	0	0
1944	0	1	0	0
1945	1	3	0	1
1946	3	1	0	0
1947	0	1	0	1
1948	0	1	0	1
1949	0	1	0	0
1950	0	2	1	0
1951	1	1	0	1
1952	1	3	0	0
	7	17	4	5

TABLE O.

PERSONS SERVING LIFE SENTENCES (1954)

—	Persons serving life sentences as result of murder convictions	Persons serving life sentences as result of murder convictions, who became insane subsequent to admittance to penitentiary
British Columbia	4	1
Dorchester	9	2
Kingston	18	7
Manitoba	13	3
Saskatchewan	20	9
St. Vincent de Paul	19	2
TOTAL	83	24

APPENDIX B

NOTE: *This report was authorized to be printed as an Appendix to this issue on adoption of the Third Report of the Subcommittee on Agenda and Procedure.*

MAY 6, 1954.

RE: MURDERS IN VANCOUVER
1944 TO 1953

A—Number of cold-blooded or brutal murders.
B—Number of murders of passion, emotion, jealousy, etc. (non-premeditated).

Date	Victim	A	B	Disposition		
				Hanged	Other Sentence	Unsolved
1944						
Apr. 2	Wellington Wallace		X		Reduced to Manslaughter —15 years	
May 7	Clifford Lennox		X		Life Imprisonment	
July 7	Mrs. Laura Rusan Mrs. Millie Preston		X		Manslaughter— 20 years	
Aug. 24	David Cuthbertson	X			Two Juveniles arrested— no prosecution	
Dec. 14	Jung Wah Hay	X				X
Sept. 20	Kevin Thompson		X		Acquittal—self-defence	
1945						
May 2	Olga Hauryluk		X	X		
May 5	Otto V. Vidlund		X		Reduced to manslaughter Stay of Proceedings	
June 22	Svere A. Danielson		X		Manslaughter-Dismissed	
Aug. 8	Geo. J. Higginson (4 mos.)		X		14 years	
Sept. 13	Diana Blunt	X			12 yr. old boy—held at His Majesty's pleasure	
Oct. 1	Reginald C. Price	X				X
1946						
June 4	Mrs. Mary Hovel		X		Murder—Suicide	
Apr. 19	Wm. Kowenala		X		Manslaughter-Acquitted	
July 25	Garry Billings	X		X		
Sept. 3	Lilliam Lee		X			X
Dec. 22	Harry Henderson	X				X
1947						
Feb. 26	Charles Boyes (Police) Geo. Ledingham (Police)	X		X		
Mar. 3	Viola M. Woolridge		X		Manslaughter—Released on Probation for 7 years $1,000.00 bond	
May 25	David J. Sherlock (14)		X		Manslaughter-Bound-over—$1,000 bond	
June 18	Harry Woo	X			(1) 15 years (2) 5 years	
June 22	Norma Burton		X		Manslaughter—12 years	
Aug. 25	Sidney S. Petrie	X		X	Committed suicide while awaiting execution	
Oct. 20	Roddy Moore (8)		X			X
Nov. 30	Geo. Bolt		X		7 years	
1948						
June 7	Ralph H. Forsythe		X		Manslaughter-Not guilty	
July 1	Jalmar Leino		X		Manslaughter-Not guilty	
Sept. 27	Mrs. Louie Shong		X		Murder-Suicide	
Sept. 22	Andrew Kirkpatrick	X			Manslaughter-15 years	
Oct. 6	Naida B. Foyer		X		Manslaughter—10 years	
Nov. 24	Frances J. Jones (18 mos.)		X		Committed to Mental Institution	
Nov. 30	James M. Whitfield		X		Murder-Suicide	

APPENDIX B—*Concluded*

Date	Victim	A	B	Disposition		
				Hanged	Other Sentence	Unsolved
1949						
June 6	Mary and Mike Geluch..	X		X		
July 9	Archie MacDonald.....		X		Manslaughter–Dismissed	
Oct. 2	William Kelly.....		X			X
Dec. 6	Wm. H. Bent.....	X				X
Dec. 15	V. L. St. Laurent.....		X		Manslaughter – Charge dismissed	
Nov. 9	Blanche Fisher.....		X	X		
1950						
Feb. 27	Mah Poy.....		X		Manslaughter–Not guilty	
Mar. 16	Gertrude Bonner.....		X		Murder–Suicide	
Aug. 12	Barbara H. Dzubac.....		X		Murder–Suicide	
Sept. 1	Low Qwon Lee.....		X		Manslaughter–Not guilty	
1951						
Apr. 22	Velma Reuben.....		X		Manslaughter–25 years	
July 15	Stanley Deren.....		X		Manslaughter–18 months	
July 6	Albert J. Bockas.....	X				X
July 28	Mary Parker.....		X		Manslaughter–10 years	
Oct. 11	Wm. McIntosh.....	X				X
1952						
May 22	Renaldo Valpe.....	X			Manslaughter–10 years	
June 14	Joseph Hyland.....	X		X		
July 28	Betty J. Weber.....		X		Murder–Suicide	
1953						
Jan. 29	Peter J. Albertson.....		X		Committed to Mental Institution	
Mar. 4	Mrs. Los Angeles Smith .		X	X		
Dec. 11	Frank Pitsch.....	X		X ?	Sentenced to Hang – Appeal pending	

Recapitulation

A — Number of cold blooded or brutal murders..... 17

B — Number of murders of passion, emotion, jealousy, etc..... 36

Total..... 53

C — Number of cases involving hanging in A.....5 plus 1 (?)
B.....3 — 8 plus 1 (?)

D — Number of unsolved murders..... 9

NOTE: It should be noted that in many cases charges of murder were reduced to manslaughter and the accused found "not guilty" or charge "dismissed". Generally speaking, these charges resulted from street fights, brawls, or similar incidents, where the victim died as result of injuries received.

W. H. MULLIGAN
Chief Constable